

Addressing Climate Vulnerability:

Promoting the Participatory Rights of Indigenous Peoples and Women through Finnish Foreign Policy

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Disclaimer: The purpose of this work is to inform the Human Rights Division of the Finnish Ministry of Foreign Affairs on entry points for Finnish Foreign Policy to address the climate vulnerability of already marginalized groups, such as indigenous peoples and women, across two regimes: the Climate Change regime, including REDD+, and in Development Cooperation. All omissions and inaccuracies in this document are the sole responsibility of the authors.

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² For a biography, see: http://www.ciel.org/Staff_Bios/Johl.html.

³ For more information, see: <http://www.wecf.eu/english/about-wecf/organization/team/stock.php> and <http://www.foei.org/en>.

⁴ For more information, see: <http://www.earthisland.org/index.php/projects/climate-wise-women/>.

⁵ For more information, see: http://www.youtube.com/watch?v=Uxq-c_FY6VE.

⁶ KIOS, the Finnish NGO Foundation for Human Rights, is a consortium of eleven Finnish organizations working for human rights and development issues. KIOS – an independent non-political, non-religious and non-governmental foundation – was founded in 1998 with the aim of funding projects that promote human rights and the development of democracy. Its founding organizations include: Amnesty International Finnish Section, Committee of 100 in Finland, Finn Church Aid, Finnish Disabled People's International Development Association (FIDIDA), Finnish League for Human Rights, Finnish Peace Committee, Finnish Refugee Council, UN Association of Finland, Service Centre for Development Cooperation (KEPA), Finnish National Committee for UNICEF, and The National Committee for UN Women in Finland.

⁷ For more information see: <http://www.iwgia.org/iwgia/who-we-are-/contact-iwgia>.

⁸ Specializing in aboriginal rights and interests, environmental affairs, and national and international public policy in the circumpolar Arctic and beyond. For further information see: <http://www.arcticgovernance.org/agp-scientific-consultants.146136.en.html>.

⁹ For more information, see: <http://www.globalplatform.fi/>.

¹⁰ For more information, see: http://voiceofwomen.org/?page_id=957.

¹¹ For more information, see: <http://www.tulelepeisa.org/about/ursula-rakova/>.

Constance Okollet¹², the Chairperson of the Osukuru United Women's Network in Eastern Uganda; Deborah Delgado Pugley¹³, a PhD Candidate at the Université Catholique de Louvain; and Grace Gao, a Masters Student at the University of Helsinki; as well as members of the Tromsø-Umeå-Archangelsk-Canada Network on Gender and Law (TUAC)¹⁴. In the end I would like to thank graphic designer of the University of Lapland, Irma Varrio for the cover.

¹² For more information, see: http://www.un-ngls.org/IMG/pdf_Constance_Okollet.pdf.

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¹⁴ For more information on TUAC, see: <http://www.umu.se/english/about-umu/news-events/calendar/display-page?eventId=4899>.

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on Human Rights, which is an independent advisory body on human rights issues nominated by the Finnish Government; and a member for the human rights delegation overseeing the newly established Human Rights Centre. Professor Koivurova is the chair of the University of the Arctic's Arctic Law Thematic Network. Professor Koivurova is also a board member in the Arctic Research Consortium of the United States (ARCUS).

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Executive Summary

Climate change is a complex systemic change with unequivocal and accelerating implications that demonstrably manifest themselves in many forms. Exacerbating existing vulnerabilities, they perpetuate drivers of climate change through systems and institutions that sustain human health and well-being – from ecosystems, livelihoods and employment to social services – and push already marginalized groups, who often lack the necessary tools to mitigate and adapt to such implications and have contributed least to carbon emissions, to the edge. Moreover, climate vulnerability is contextual, resulting from socio-economic factors including: economic (financial wealth or poverty; differential livelihoods), social (education, health), geographic, demographic (e.g. age, gender, etc.), indigenous or minority status, sexual orientation, disability, culture, institutional (structural obstacles), governance, ethnicity, social class and caste, and environmental factors.

However, “vulnerability” goes beyond the biophysical aspect of climate change - it provides a policy-relevant framework within which to examine the capacity or resilience of socio-ecological systems or peoples to cope, adapt to, or recover from stress. Understanding the conditions and choices that make individuals vulnerable in the first place is an important aspect of projecting and responding to climate change implications. Gaps in current human rights and climate change frameworks highlight the potential for these frameworks to be mutually reinforcing, where human rights may serve as “a compass for policy orientation.”¹⁵ Thus, while there is a notion that vulnerable groups should be included in decision-making merely because they are marginalized, they should, in fact, participate because they contribute alternative perspectives, experiences, and context-specific knowledge that may enhance the value of local innovation and help address existing obstacles. Moreover, international cooperation and social mobilization are critical in providing such groups with the necessary tools – economic, scientific, and technical – to design and implement inclusive strategic plans; mitigation and adaptation policies; as well as globally negotiated and locally implemented climate change policy, from climate financing to development cooperation.

The link between human rights and the environment, as outlined in the study **Addressing Climate Vulnerability: Promoting the Participatory Rights of Indigenous Peoples and Women through Finnish Foreign Policy**, is reflected in the number and scope of international and domestic laws, judicial decisions, and academic studies. Nonetheless, unresolved issues surrounding this discourse remain. Consequently, in light of the Human Rights Council’s decision to establish a mandate on human rights and the environment, and the appointment of Mr. John Knox to a three-year term as the first Independent Expert on Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, this MFA-commissioned report, focusing on women and indigenous peoples, is timely. Thus, in mapping out entry points for Finnish

¹⁵ Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press, 19.

foreign policy to address the climate vulnerability of these two groups, focusing on the role of participatory rights where environmental governance has been inadequate in empowering and systematically including marginalized groups, this report aims to answer the following questions: *What are the main challenges in linking climate change to human rights? How can we meet these challenges and overcome resistance? And, what are the next steps?*

Methodology & Aim

In his preliminary report, Knox identified rights to freedom of expression and association; rights to receive information and participate in decision-making processes; and rights to legal remedies (e.g. systems of support and redress) as crucial in environmental policy-making, stating that “[t]he exercise of these rights makes environmental policies more transparent, better informed and more responsive to those most concerned.”¹⁶ He also noted the importance of non-state actors, including multinational corporations and vulnerable groups, as well as new. Consequently, sufficient and sustained, as opposed to reactive (e.g. short-term disaster relief), measures must be integrated into top-down and bottom-up approaches. Moreover, the importance of non-state actors must be properly taken into account. Rescaling across issue areas and integrating an understanding of climate change implications – legal, relevant, and actionable – allows for the coupling of concerns by joining social dimensions – from the marginalization of women to the plight of indigenous peoples – into new and existing climate change policy architecture.¹⁷ This provides present institutions with an opportunity to re-examine policy processes, such as efforts by the World Bank to include Free Prior and Informed Consent (FPIC). This report adopts such a lens in examining two regimes: the climate change regime, with a special focus on the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD), and development cooperation.

Theoretical Background: Climate Change & Human Rights

It has been contended that both conceptually and practically, the intersection of human rights and environmental protection, is more potent than either discipline working in isolation. However, the human component has largely been weak or missing in climate change policy and the debate on how states can apply human rights norms in mitigation and adaptation to climate change remains largely unanswered. The multifaceted nature of climate change and its implications reveal inherent limitations and gaps in current governance structures.

An often-discussed roadblock is the fragmentation of international law, where various sub-disciplines increasingly function independently of one another, leading to

¹⁶ Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development; "Environment and human rights: the link is there, and so is the States' obligation to protect them – UN expert." *Office of the High Commissioner for Human Rights/ OHCHR Welcome page*, access at: <http://bit.ly/WqlW6G> (last accessed: 27 July 2013).

¹⁷ Humphreys. (2010) *Human Rights and Climate Change*, 301.

overlapping and even conflicting sets of norms, framed without due consideration of either discipline. The isolation of environmental and human rights law, to date, serves as a paradigmatic example. Separate institutional frameworks for human rights and the environment often mean that governance is competitive, rather than cooperative or coordinated, in coping with environmental issues, particularly when factoring in existing human rights discourse. It takes determined countries, such as Finland, to help provide opportunities for institutional and governance innovation. There is a need for comprehensive global agreements that address such matters in a holistic and coordinated manner (e.g. among various treaty bodies and agencies) and, thereby, help guarantee the success of integrative laws and policies. This requires an approach that enables countries, like Finland, to mobilize diverse financing and policy options for climate resilient development by, for example, focusing aid and climate efforts on marginalized and vulnerable groups, both in the context of development cooperation and climate change.

a) *International:*

The impact of environmental sustainability on the enjoyment of human rights has held a strong presence in discussions surrounding environmental protection since the late 1960s, featuring prominently on an international level.

b) *Regional & National:*

Binding international regional agreements began acknowledging the link between human rights and the environment in the 1980s. Although nearly all normative instruments lack reference to the environment, **the Inter-American Commission and Court of Human Rights** have articulated “the right to an environment at a quality that permits the enjoyment of guaranteed rights”.¹⁸ While cases presented by applicants have, among others, asserted violations against the right to life, health, property, culture, and access to justice, the Commission has generally recognized a basic level of environmental health, not linked to a single human right, required by the very nature and purpose of human rights law. Governments are required to enforce laws that enact any constitutional guarantee of “a particular quality of environment.”¹⁹ The **Aarhus Convention** also explicitly provides a legally binding obligation for its parties to promote these principles in international governance, stating: Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment. In order to further implement the provision of Article 3.7 of the Convention, Parties adopted **the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention**²⁰ in international fora.

¹⁸ Ibid 17.

¹⁹ OHCHR and UNEP. (2012) “Human Rights and the Environment”, 29.

²⁰ The Almaty guidelines do not specifically refer to the needs and interests of any particular group of stakeholders such as indigenous peoples or women. The Almaty guidelines, however, do explicitly emphasize

Almaty Guidelines provide normative foundations and procedural safeguards guaranteeing that the views of those affected are, or will be, reflected in the final policy outcome. Moreover, there is “a growing trend” – with around 130 states haven taken up some form of state obligation since the 1970s – “to give environmental protection” – the right to an environment of a specified quality, such as a healthy, safe, secure, clean, or ecologically sound environment – “constitutional status in many national legal systems, either explicitly, or by judicial interpretation of other constitutional guarantees.”

Human Rights & Climate Change

Translating climate change implications into human rights language has, at times, been regarded as creative interpretation based on ethical and moral import and has, in turn, been avoided in current policy-making. In the climate change regime, procedural fairness, environmental justice, and arguments for immediate climate change action have emerged as important principles without reference to human rights and, thereby, may serve to disregard the vulnerability of those who are already marginalized. While the climate change regime has been slow to adopt a rights-based approach, human rights institutions have only recently begun considering climate change as a human rights issue, as opposed to a mere environmental problem. Nonetheless, human rights monitoring bodies have recognized that the effects of climate change have undisputed implications for individuals’ well-being and human rights language may provide normative traction for strong mitigation and adaptation policies. The **2009 Human Rights Council consensus Resolution 10/4** on human rights and climate change, in particular, recognized that individuals are a central concern to sustainable development noting that, “human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes.”²¹ Furthermore, in its report on mapping the general human rights consequences of climate change, the OHCHR examines those human rights that are most affected by climate change noting that human rights bodies recognize “the intrinsic link between the environment and the realization of a range of human rights.”²² Additionally, it focuses on the duty of international cooperation and emphasizes access to information and participation in decision-making. Although the OHCHR report declines to conclude that climate change is a violation of human rights itself, states’ legal duties concerning climate change *are* grounded in human rights law.

that special measures are set in place in order to ensure the participation of marginalized groups, emphasizing factors related to their marginalization rather than referring to pre-established groups.

²¹ Human Rights Council, Tenth Session, Resolution 10/4 on Human Rights and Climate Change, see: <http://bit.ly/12BH8fg>; The resolution was supported by 88 UN member states from various regions. Kravchenko, Svitlana, Procedural Rights as a Crucial Tool to Combat Climate Change (27 October 2010). Georgia Journal of International and Comparative Law, Vol. 38, No. 3, Spring 2010, 647.

²² Heinämäki. (2010) The Right to Be a Part of Nature: Indigenous Peoples and the Environment, 24 and 252-253; Malé Declaration, Human dimension of Global Climate Change, Adopted 14 November 2007, Malé; Knox, (2009) Linking Human Rights and Climate Change at the United Nations, 486.

International human rights policy and climate change policy, thus, stand to gain from cross-fertilization, addressing the human and equity dimensions of climate change. Focusing on vulnerable groups, a human rights-based approach (HRBA) empowers them as agents, providing ownership in the design and implementation of adaptation policies (e.g. integrating social concerns with environmental goals, norms, and responsibilities); setting national and international mitigation targets; and holding decision-makers accountable. Meanwhile, challenges include:²³ an indirect concern for the environment; state and non-state actors' limited capacity to partake in a HRBA (e.g. a lack of time, expertise, information, funding); and the simple rhetorical repackaging of aid policies by incorporating human rights language. See section 2.7. on HRBA to the Environment for a more detailed discussion.

Environmental Rights: Substantive & Procedural

While the link between climate change and human rights may seem self-evident, this report further outlines the role of both substantive and procedural rights. While substantive rights are, to a large extent, vague and regarded as a policy statement, procedural rights are more concrete, effective, and flexible in achieving environmental justice. Insofar as states have committed themselves to upholding international human rights, they are also under legal obligation to strengthen procedural rights in international environmental decision-making. Policies that are designed and implemented without the inclusion of affected parties, may be technically inappropriate, too costly, or unrealistic, undermining their success and at risk of not fulfilling the needs and priorities of the affected community. Therefore, one objective in opening up decision-making processes is the widening of the range of voices heard, thereby, improving the quantity and quality of available policy choices (e.g. relating to infrastructure, land use, etc) and avoiding having to define the notion of a 'satisfactory' or 'decent' environment. This is discussed in greater detail in section 2.4. Environmental Rights.

Indigenous Rights in International Law

Indigenous peoples have traditionally been adaptive and resilient, contributing least to climate change. However, the current pace of change resulting from climate change coupled with socio-economic transformation is beyond indigenous adaptive capacity – amplifying dispossession, marginalisation, acculturation, and discrimination – and threatening indigenous peoples' general human rights (e.g. the right to life or health), the right to culture and traditional way of life is under immediate and direct threat. Despite some positive impacts, mitigation and adaptation projects may also have numerous adverse effects on indigenous livelihoods and rights – for example, projects aiming at the protection of forests may adversely impact indigenous peoples' access to lands, resources, and the manner in which traditional activities are conducted. International law can help indigenous communities protect themselves by providing them with the opportunity to

²³ OHCHR and UNEP. (2012) "Human Rights and the Environment", 35.

shape analysis, decision-making processes, design instruments and substantive outcomes, draw attention to climate change vulnerability, and trigger more effective responses.

Recent developments in international law, relating to indigenous peoples (e.g. Free Prior and Informed Consent), strongly support their inclusion in matters directly affecting their rights and interests. The right to culture, protected via minority protection provision 27 in the universally accepted International Covenant on Civil and Political Rights (ICCPR) not only recognizes their substantive right to culture, and thereby to traditional territories, but also guarantees strong participatory rights, including free, prior and informed consent (FPIC), in cases where indigenous peoples' traditional lands and way of life are significantly threatened due to outside interference. Moreover, on an abstract level, the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 marked a paradigm shift in state-indigenous relations. The right to FPIC has been regarded as a part of self-determination, clearly demonstrated in UNDRIP in relation to, for instance, the use of natural resources.

This report aims to show how FPIC, as a relatively new principle relating to both human rights and indigenous peoples, has found its way into biodiversity protection, as well as into the guidelines of financial institutions. The section 2.5. Indigenous Peoples Rights in International Law provides Finland, as a strong support of UNDRIP, with recommendations specific to indigenous peoples. These include recommendations on: the application and implementation of FPIC; the inclusion of indigenous representatives in national delegations (See section 2.5.3. On Indigenous Peoples' Right to Self-Determination).

Women's Rights in International Law

Women are particularly vulnerable to climate change due to 1) historical inequalities (e.g. social roles and impoverished status); 2) dependence on sectors and resources that are set to experience intense shifts (e.g. water and agriculture); 3) poor access to economic and social resources (e.g. financing, new technology, bargaining power, assets, social capital, medication, and information) in both developing and developed countries; and 4) insufficient representation in decision-making processes on climate change mitigation and adaptation (See section 2.6.1. Gender and Climate Change). However, while gender consideration should be central when drafting international environmental law, including specific provisions and matching commitments for practical implementation, the climate change debate has been largely gender blind, fragmented, superficial, inconsistent, partially implemented, and often limited to short-term interventions. Moreover, from a climate change perspective, where the roles of men and women may change (e.g. due to migration), the instrumentalization of individuals (e.g. subjects of a function), contrary to individuals as the subjects of rights to which states have a mandate, is a particularly important discussion (See section 2.6.1. Gender and Climate Change) that must be taken into consideration in policy-making.

While no single international agreement encompasses all components of climate change – from human rights to disaster risk reduction – multiple principles outlined in many agreements and instruments complete the climate change picture.

There are several common threads that run through these instruments, including: a) equal rights and access to resources (e.g. land and credit); b) participation in decision-making processes; c) priority to women for capacity-building and addressing risks due to exacerbated inequalities; d) just and accountable climate mechanisms; e) mainstreaming gender in all levels of climate-related programming, design, development, implementation, monitoring, and evaluation. While these instruments lack mechanisms to robustly guarantee implementation, enforce compliance or address impunity, they have normative power to shape the political, economic and development landscape by consciously and publicly placing priorities on paper. Moreover, public finance, via multilateral or bilateral climate funds or development cooperation channeled through bilateral or multilateral development institutions, is crucial to providing gender-equitable climate finance. **It is also an arena where Finland can effectively influence women's ability to participate in decision-making by guaranteeing women's input and participation at all stages of implementation.** Existing initiatives, like Finland's support of the GGCA (Global Gender Climate Alliance) that recognize women's critical leadership and participation in developing climate change policies are also particularly beneficial in promoting women's rights.

Intersectionality

Debates surrounding climate change must also recognize the subject of intersectionality (See section 2.6.6. Intersectionality: The Role of Indigenous Women). While women's rights have been formally codified as human rights in CEDAW and indigenous peoples' human rights have been codified in UNDRIP and recognized as crucial, indigenous women's rights are often neglected at both the international and local levels. This report, thus, places an additional focus on the role of indigenous women, who often face systemic violations – deepened exclusionary and discriminatory practices present within their own peoples and in the non-indigenous majority of society – of their human rights in a climate change context, and are also often forgotten in decision-making. There are several reasons as to why indigenous women are particularly vulnerable to the impacts of climate change: geography, land rights and ownership, resources, participation, patriarchy, discrimination.

Finland's Human Rights Policy

Finland promotes democratic structures, multilateral cooperation, well-functioning institutions and processes, as well as international rule of law that both strengthen and safeguard human rights. Furthermore, its international human rights policy – founded on the Universal Declaration of Human Rights, human rights conventions, internationally binding human rights documents, and premised on the universality, indivisibility, and

interdependence of human rights²⁴, including equal rights implementation, irrespective of ethnic origin, gender, age, religion, opinion, and sexual orientation – serves as an instrument for creating a more just, secure, and humane world through the improvement of human rights internationally. With regard to *Finland's human rights policy on women* (See section 2.6. Women's Rights in International Law) internationally, Finland emphasizes: participation, gender mainstreaming, land rights, and resources (e.g. financial and expert support). Additionally, *Finland's human rights policy on indigenous peoples* (See section 2.5. Indigenous Peoples Rights in International Law) has promoted and prioritized indigenous peoples' rights within Finland's foreign policy priorities, while focusing its efforts on decreasing discrimination and strengthening the status of indigenous peoples by implementing the objectives set out in UNDRIP. While this report focuses on indigenous peoples and women, in particular, it also briefly examines three additional vulnerable groups – the child, disabled persons, and gender and sexual minorities – and provides a brief list of recommendations for each groups (See section 1.3.3. Other Vulnerable Groups).

Climate Change Regime

Despite the growing understanding of the implications for human rights of climate change and of response measures, the UN climate change regime established under the 1992 UNFCCC had neither recognized explicitly this relation nor considered the implications of UNFCCC decisions until only recently. In 2010, the COP adopted the first references to these interlinks, acknowledging the impact of climate change for the public and in particular for the most vulnerable groups. Furthermore, the COP also reaffirmed the necessity for parties to uphold human rights in relation to all climate related policies.

The adoption of the Cancun Agreements in 2010 have provided many opportunities to review the modalities of established policies and work programs under the convention and to address human rights implications through new perspectives in the climate regime (such as loss and damage). Many core elements of the climate change regime (such as the CDM) are also undergoing a review, thus providing an opportunity for parties to address existing deficiencies in the climate regime. Furthermore, the opening of a new round of negotiations in 2011 with the adoption of the Durban Platform allows to consider opportunities to address human rights impacts in innovative manner, such as in relation to the ultimate objective of the convention or in establishing a grievance mechanism for affected stakeholders.

In this context, we have highlighted numerous timely opportunities for Finland to promote right-based frameworks in various areas of work of the climate change. The recommendations highlighted below can be found in a more articulated version in the relevant sub-sections of the report, accompanied by additional recommendations.

²⁴ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 14, 7 and 9.

Guaranteeing human rights protection through the full implementation of the convention

Ongoing negotiations related to the “ultimate objective” of the UN climate change regime provide an opportunity to consider the importance of the full implementation of the convention for the protection of human rights as well as to determine a minimum threshold for mitigation action.

- In the short-term, Finland could call on the Subsidiary Body for Implementation to identify **the current gap of knowledge and to request additional studies regarding the implication of the two degrees target in relation to parties’ commitments to various international human rights norms** and other principles of international law.
- In the long-run, Finland could advocate for the use of **human rights as thresholds** in the review of the global goal in order to ensure that a cost-benefit analysis of climate impacts do not trump the adverse effects on vulnerable populations.

In relation to communities already affected by the impacts of climate change, adequate and participatory adaptation policies should be designed and supported in order to prevent the infringement of the rights of local communities and in particular of the most vulnerable.

- Recognizing that men and women are affected by the impacts of climate change differently, Finland should call for a systematic **collection sex-disaggregated data** and the requirement that all adaptation policies be designed based on a **gender-sensitive approach**.

Finally, the establishment of institutional arrangements for loss and damage caused by adverse impacts of climate change offers a unique opportunity to address the plea of most vulnerable groups.

- Finland should insist on the establishment of strong connections between the work of the climate change regime on loss and damage and **existing international fora with expertise** in subjects relevant to this issue. Finland could join and actively support the Nansen initiative and the consideration of the relevance of its outcomes in the UN climate framework to ensure that the protection of the rights of persons by climate change.
- Affected individuals and communities must be able to **seek directly compensation for their losses**. The loss and damage mechanism should therefore allow stakeholders to submit relevant information, including firsthand

accounts of the impacts of climate change, and make requests for compensation.

Procedural rights

First of all, Finland should aim at strengthening the procedural rights of members of the public at the climate change negotiations, and in particular the rights of participation of indigenous peoples.

- Building on best practices in other UN bodies, Finland could request the UNFCCC to establish a framework-wide **information disclosure policy** for all UNFCCC documents and information.
- Finland should systematically – except when particular circumstances require otherwise – **call upon chairs and others parties to enable meetings to take place in an open format and to invite input** from representatives of the public into the proceedings of the sessions, in a non-tokenistic manner.

At present, the participation of indigenous peoples representatives is constrained according to the rules of procedures and practices applying to other constituencies of the public. This approach however does not fully acknowledge the special nature of the rights of indigenous and fails to empower their effective participation.

- Finland could advocate for the **establishment of an Indigenous Peoples' Expert body** in the UNFCCC framework. This body could serve both to channel technical advice from indigenous communities and to enable the UNFCCC to better take into consideration indigenous knowledge in its work.
- Finland could support the provision of additional support through the establishment of a **Technical support unit for Indigenous Peoples' issues**. The secretariat should also nominate indigenous focal points in the UNFCCC Secretariat in each area of work of the secretariat.
- Finland could support the participation of indigenous people in UNFCCC regime through the establishment of a **voluntary trust fund**, building on best practices implemented in the operation of the CBD voluntary funding mechanism.

The recommendations highlighted previously would strengthen the right to information and right to participation of the members of the public. The establishment of a grievance mechanism, building on the experience of other international forums, should support the guarantee of the exercise of these rights and provide an opportunity for impacted stakeholders to benefit from access to a remedy.

- Finland should request **additional research on possible benefits and modalities of the creation of a grievance mechanism** established under the convention, in particular providing a study of best practices among other international.

- In the context of the negotiations under the Durban Platform, Finland should **advocate for the establishment – or at least for the adoption of a specific mandate** to establish such a mechanism as part of the outcome of the work of the Ad-hoc Working Group on the Durban Platform.

Finally, human rights violations associated to the implementation of projects registered in the Clean Development Mechanism have highlighted the inadequacy of the current modalities and procedures of the CDM.

- Parties need to address the absence of **redress mechanism – such as the appeal process currently under negotiations – for stakeholders** whose rights are adversely impacted a CDM project. Finland should ensure that this mandate is implemented in order to the current infringement of the right of access to justice in relation to CDM projects.
- Some past and ongoing issues have resulted from the lack of concrete guidelines on the conduct of local stakeholders consultations. A set of rules should be provided in order to guarantee a **minimum threshold in the quality of the local stakeholder consultation process**. The ongoing review of the modalities and procedures also presents an opportunity to **clarify the process for the validation of the local stakeholders consultations**.
- Finally, the review of the modalities and procedures should explicitly mandate the Executive Board to uphold its responsibility to ensure that the projects registered do not infringe international norms including the UN Declaration on the Rights of Indigenous Peoples and the Convention to Eliminate All Forms of Discrimination Against Women. The review should also provide the possibility for the Board and parties to monitor the respect of international norms and adequate action even **once a project as been adopted**.

Development and Aid

Climate change, environmental concerns and sustainable development have become recently a new paradigm of development aid and development discourse, leading to new thematic prioritization. HH Holistic and sustainable development policies that effectively integrate social, environmental, and economic aspects as well as take account of climate change impact, are envisaged as a new trend in development policy-making. However, the relationship between climate change policies and development assistance/development policies is uneasy, including risk of maladaptation, issues of local ownership of development projects, human rights safeguards in the new type of projects or consistency of development efforts troubled by too much “mainstreaming”. Challenges in development-climate nexus are particularly visible when mariginalized and particularly vulnerable to climate change groups face discrimination, lack empowerment, and when their specific problems go unnoticed. International human rights instruments may serve as a platform to address the challenges of aid-climate nexus, providing aid with legitimacy

and high moral ground, improve the quality of assistance. Human rights-based approach (HRBA) becomes one of the keywords in the development aid, including climate dimensions and strong emphasis on participation, but there is little clarity what the HRBA is supposed to exactly mean and what kind of policy change it is to entail (See section 5.1. for discussion).

International institutions, through which the global standards for development and aid may be influenced, and which, thus, constitute vital entry-points for Finnish human rights activities: Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD DAC), UN Development Programme and World Bank Group (See respectively sub-sections 5.4., 5.5. and 5.6.).

OECD-DAC, grouping the biggest donor states in its guidelines, inter alia, supports civil society organizations strengthening the voice of the most vulnerable, promotes non-discrimination and applies some, although isolated, human rights-based indicators. In climate change projects, taking proper account of ethnicity and gender in development actions is to avoid a number of adverse effects. DAC has also developed guidelines on gender equality and women's empowerment, arguing for making these strategic development objectives. The role of DAC donors is to be particularly important in capacity building, supporting impact assessments, good governance, raising awareness and conducting high-level policy dialogues. Surprisingly, DAC has not adopted any policy documents (or specific guidelines) comprehensively approaching the problem of indigenous peoples in development.

UNDP may be perceived as a prime standard setter in regard to the gender-development-climate nexus, including: women's adaptive capacity, mitigation and adaptation actions which promote poverty reduction and gender equality, disaggregated data regarding climate change, traditional knowledge in planning, or decreasing gender biases in climate finance. UNDP has also emphasised particular vulnerability of indigenous women in crisis situations. Attention is also given to indigenous (culturally appropriate) participation at all levels in decision-making processes, especially those that may affect their human, developmental and environmental rights.

World Bank Group and institutions financing development have only taken first steps towards integrating human rights into their climate actions. WB has developed human rights relevant safeguard policies in order to avoid adverse impacts of development projects for which it provides funding. However, climate finance is not yet well covered by existing safeguards. Moreover, the WB's focus has been so far primarily on climate mitigation.

Important processes, where climate change concerns in development and participation of groups vulnerable to climate changes, include: International Conference on Population and Development, the post-Monterey 2002 process on Financing for Development and the process of shaping of new development agenda and post-2015 (after the end of Millenium Development Goals timeline) sustainable development goals. The report puts particular attention to the post-2015 agenda (See sub-section 5.7.). The post-2015 agenda appears to have a set of already defined parameters, such as the new

framework of specific goals (reflecting the success of the MDGs), human rights-based approach, inequality and gender focus, incorporation of climate change and disaster-related risks in planning and the emphasis on participation. The specific and practical setting of the new agenda is, however, yet to take shape. To date, Finland has strongly supported an emphasis on human rights, inequality, and the enhancement of the status of women in the post-2015 process.

Finland's own development cooperation has taken up the principles of HRBA and sustainable development. Gender, reducing inequality and climate sustainability constitute cross-cutting objectives of Finnish development aid, with particularly strong record of promoting gender equality and women's empowerment (See section 5.2.).

Development and Aid: Key recommendation

Finnish Development Aid (See section 5.8.1.)

- An Indigenous Focus for Finland's Development Cooperation and Aid Policy Statement: A major shortcoming of Finnish aid policy towards indigenous peoples is the lack of a (clear) indigenous focus. The development of clear policy statement would: underline existing efforts; strengthen Finland's position and role as a promoter of indigenous rights; strengthen; and ensure the quality of future projects and policies.
- Closer cooperation with Finnish Sami organizations, institutions and experts may be of an advantage both for Finnish development aid and Finland's international development advocacy.
- Using, sharing and promoting best domestic and international practices (e.g., Sami Parliament and Akwe-Kon Guidelines) in enhancing indigenous participation within and through Finland's development aid, for example by strengthening indigenous organizations (especially grassroots where the risk of project failure is comparatively higher) and political dialogues with cooperation partners.
- The role of indigenous women in food production, the transmission of traditional knowledge, and education should be properly understood and programmes/projects dedicated to women's empowerment should build on the indispensable character of women's work for survival of indigenous communities and cultures.
- Finnish development policy should support indigenous and networks' ICT capacities, including human resources, education, technical support, experience-sharing, adopting ways to combine modern ICT with cultural practices for education, advocacy and the restoration of traditional knowledge.

OECD-DAC (See section 5.8.2.)

- Finland should encourage development of OECD-DAC guidelines on Development Cooperation with Indigenous Peoples. Considering the influence that DAC guidelines and peer-reviews have on aid practices, such guiding documents may visibly improve main donors' policies with regard to indigenous peoples.

The Post-2015 Development Agenda (See section 5.8.3.)

- In order to facilitate participation of women's and indigenous organizations in the post-2015 process, Finland should play a major role in supporting these NGOs within development cooperation, as well as in influencing EU activities in the field, by: promoting legal regimes supporting NGO activity; including various stakeholders in ongoing political dialogues, via various forms of regional cooperation to which Finland is party to, as well as with partners in the Global South; and sharing the Finnish model and experience regarding the support of legal frameworks for and cooperation with civil society partners. The support of civil society partners could take place via instruments, such as UN Voluntary Fund for Indigenous Populations, and the support of international NGOs that enhance indigenous peoples' participation directly through Finnish development aid.
- Finland should support measurable targets and indicators addressing the specific situation of women and indigenous communities. Gender equality should be included in all post-2015 sustainable development goals, with specific gender targets and indicators for each goal.
- Indigenous Collective Rights: An Indispensable Element of the Human Rights Framework: While indigenous peoples were largely excluded from the MDGs, there is a clear need for a set of goals and indicators taking account of the special situation of indigenous groups and the recent international developments, including: FPIC; access to, ownership and control of the traditionally used lands and resources; or the acknowledgment of collective rights.
- Finland should ensure that disaggregated data and a participatory approach are a part of its development aid activities, aiming at the fulfilment of the post-2015 framework. MDGs apply to general population statistics and, thus, often conceal inequalities, discrimination, social, and economic barriers. Monitoring should be based on the participation of civil society actors and examine not only outcomes but also the process.

REDD

REDD, a mechanism at the centre of global and national mitigation strategies, provides incentives for reducing emissions from deforestation and forest degradation in developing countries by creating financial value (e.g. financial compensation) for carbon stored and

absorbed by forests, providing developing countries with funding for limiting deforestation and forest degradation. Since its inception, REDD+ has generated great interest as a possible means of strengthening community land and resource rights, empowering community institutions, increasing income through benefit-sharing, and supporting indigenous peoples' and local communities' forest stewardship activities. The notion that development cooperation, in the context of REDD+ (including conservation, sustainable forest management, and the enhancement of forest carbon stocks), requires capacity-building has led to a three-phase approach that is supported by multilateral platforms (UN-REDD, Forest Carbon Partnership Facility (FCPF)²⁵, and the Forest Investment Program (FIP), and bilateral agreements with individual donor countries): **Phase 1: The Development of National Strategies, Policies, Measures, and Capacity Building; Phase 2: REDD+ Readiness – The Implementation of National Strategies; Phase 3: Fully-measured, Reported, and Verified Results-based Actions.** REDD+ is particularly interesting as pilot projects are already testing its viability in 44 countries, leaving plenty of room to influence current policies.

UN-REDD and the World Bank Group

Both UN-REDD and the FCPF have developed joint guidelines with the aim of supporting effective stakeholder engagement for REDD+ readiness, especially with regard to indigenous peoples and other forest-dependent communities. UNFCCC Cancun Decision 1/CP.16 included two particular safeguards that provide: 1) “respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the UN GA has adopted the UNDRIP”; and 2) “the full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities” in REDD+.

REDD+ Financing

Pilot programmes – testing out different means of financing REDD+ – are key to the decision on how the scheme will be financed in the future. It is here that participatory rights are particularly important. While current costs – incurred in drafting REDD+ programmes, enhancing readiness, and initial implementation – are mostly covered by development cooperation funds, the long-term goal includes the establishment of a market-driven financing mechanism that is supported by public funds. In addition, the Green Climate Fund (GCF) will serve as an operating entity of the financial mechanism of the UNFCCC, supporting initiatives in developing countries relating to mitigation. Finland should, thus, keep an eye on development in this area.

Participation and Decision-Making

REDD+ aims to take a decentralized approach in three regards: 1) design process; 2) the protection of local peoples from exploitation and abuse via multiple checks and balances

²⁵ To date, Finland has supported the Readiness Fund of the FCPF with a total of EUR 11 million.

that help guarantee basic human rights, procedural equity, and appeal processes; and 3) decision-making on implementation and benefit allocation. The success of REDD+ is, thus, determined by: 1) measurable, reportable, and verifiable forest carbon estimates; and 2) FPIC, participatory rights under national REDD+ policies and measures, as well as no corruption. Additional aspects include access to information and state obligations under international law that require REDD+ countries to meet higher standards of participatory decision-making. **Moreover, most European governments, including Finland, are obliged to incorporate procedural rights in negotiations concerning REDD.**

Capacity building and participation are particularly crucial in forest management. Integrating a rights-based approach into REDD+ requires that pro-poor policies guarantee indigenous and local communities' rights. However, the role of procedural rights has been a contentious issue. While the discourse surrounding participation has gained traction, it is still questionable to what extent it is actually being implemented successfully in existing REDD+ processes. There are also disagreements as to how inclusive increased participation in REDD+ decision-making processes – the creation of invited spaces for various stakeholders to interact – have been.

- a) **Women and REDD+:** Current REDD+ initiatives may further exacerbate inequality regarding women's access and control over land, forests, and natural resources. This is, in part, because current REDD+ architecture focuses on the link between carbon credits and the reduction of deforestation, which is particularly problematic because women are less likely to be responsible for deforestation and forest degradation in the first place. In addition, women often have no ownership rights, making them ineligible to receive carbon credits or other benefits from REDD+ and the gendered dimension of property and tenure rights is complex. There are concerns that REDD+ may close traditional or customary tenure rights to local communities, especially poor women. This is, in part, because REDD+ policy-makers and programme staff lack knowledge on gendered dimensions of forest-based resource use, needs, access, and knowledge.
- b) **Indigenous Peoples and REDD+:** With regard to implementation, REDD+ projects must include a contextual analysis that enables FPIC by "tailoring each agreement to the specific circumstances of the tribes and lands involved."²⁶ Indigenous peoples have **largely** been **excluded** from UNFCCC negotiations on REDD+. This is, in part, due to their nearly non-existent role in UNFCCC decision-making, in general. "Indigenous REDD+", the proposal for an alternative to traditional REDD+, emerged at COP16 in Durban with an emphasis on designing and ensuring that financial benefits from REDD+ projects flow directly to indigenous communities and the ability of indigenous peoples to preserve forests and recognize that REDD+ must be implemented

²⁶ Van Dam, Chris, "Indigenous Territories and REDD in Latin America: Opportunity or Threat?", 2 *Forests* 394-414, 408; doi: 10.3390/f2010394 (2011). 176.

with clear assurances of land ownership in all REDD+ activities. Wessendorf has noted that indigenous peoples' representatives have been at the forefront of advocacy work with the UNFCCC, leading to the broadening of the scope of REDD, as well as the inclusion of social and environmental safeguards in the Cancun agreement. It also recognizes that, in order for this to be achieved, a rights-based approach must be applied.

FPIC: Despite the broad acceptance of its importance as an ongoing process of REDD+, there are difficulties, precisely in defining how the right to FPIC should be operationalized, thus, challenging its wider practical adoption. For instance, while FPIC has primarily been utilized in developing more focused projects (e.g. mining projects, dams, roads), its application in the context of REDD+ decision-making (e.g. national REDD+ plans) is still somewhat unclear. Some limitations arise in advocating for a strong commitment from states to comply with FPIC.

Safeguards

The implementation and monitoring of REDD+ includes principles and social and environmental safeguards (REDD+ SES)– for which there is a growing need both at an international and national level – that serve as the basis for ensuring that actors' rights (e.g. indigenous peoples' rights) and interests in REDD+ decision-making processes. Agreed upon at COP16 (2010), REDD+ Safeguards lay out seven principles that guide REDD+ actions in national contexts. These include, among others: transparent decision-making, participation by local and indigenous communities, and the protection of vulnerable people and ecosystems. Lessons learned from REDD+ schemes, to date, indicate that REDD+ safeguards must be embedded in existing and future national processes where global safeguards are adapted on a country-level. This provides countries with the flexibility to design safeguards that ensure that opportunities from, as well as social and environmental risks of, REDD+ are addressed with the national context in mind.

REDD+ SES – versatile in their ability to be tailored specifically to each country, but also be used consistently across countries – provide a comprehensive framework of key issues and elements of quality set to go beyond minimum safeguards.²⁷ See more in section

²⁷ "Guidelines for the use of REDD+ Social & Environmental Safeguards at the Country Level" (Version 2), 6, access at: <http://bit.ly/1548UkS> (last accessed: 27 July 2013).

6.4.1. REDD+ SES. Having recognized that safeguard implementation and SIS are minimum requirements, financing must be directed toward activities (e.g. improving governance) that enable carbon and **non-carbon benefits** (NCBs).

Criticism

An awareness of potential consequences is particularly important as forest-related institutions often have a tendency of being characterized by unclear property rights, remoteness from public scrutiny, and historically repressive state actions. As a result, the international community may face both risks and payoffs: the human rights risks of forest-related interventions in the short run, and human rights risks of no action in the long-run. However, these risks – especially those affecting indigenous peoples and women’s rights and welfare – may be minimized through human rights safeguard policies, monitoring, and assessments.

While the nascent state of REDD+ should, in theory, allow for the protection of environmentally based livelihoods of many indigenous groups, improve forest governance, and increase resource flows to poor rural communities, and provide enhanced biodiversity preservation; scepticism remains as to the risks, such as rewarding practices that may result in negative environmental and social externalities (e.g. biodiversity loss through monoculture tree planting or the prevention of subsistence activities by forest dwellers), that may come with existing REDD+ mechanisms. It is not surprising that already marginalized groups, including women and indigenous peoples, have several reasons – ranging from land rights to forest conservation to centralized forest management – as to why they may feel particularly feel at risk.

REDD+ also bears the risk of causing social and environmental harm if its programmes only focus on reducing emissions. There has, for instance, been criticism of the fact that REDD+ does not protect forests that have already been successfully protected (e.g. forests conserved by indigenous peoples). It has been also noted that this may suggest that REDD+ arrangements maybe remain outside international carbon markets in order to prevent profit motives that incentivize the exploitation of indigenous peoples. Further criticism includes the exclusion of various stakeholders from forest-policy decision-making at the national and sub-national level.

REDD+: Recommendations

While REDD+ is often discussed in siloes, there is a need for an integrated and more effective approach – further guidance and modalities grounded in lessons learned – to implement REDD+ activities. REDD+ activities must be set within a wider focus on the underlying drivers of deforestation and degradation, including poverty and agricultural policies, among others. Moreover, it is important to set ambitious, but reasonable goals for what REDD+ can do for forests. Country ownership of the REDD+ process and meaningful and continued stakeholder engagement are key to developing realistic, effective, and equitable safeguards that will help assuage valid concerns about the risks of

REDD+. Considering a growing demand for REDD+ pilot projects, there must also be a concerted global effort to improve and increase financing for country-specific REDD+ strategies and objectives, catalyzing adequate financing for REDD+ across all phases of implementation, and incentivising NCBs. This also includes long-term stable funding for indigenous peoples' and women's representatives to participate in decision-making.

World Bank Safeguard Policy: Update & Review

The World Bank's Safeguard policy is currently undergoing a three-phased review and update. Particularly relevant dates include:

- Review and Update Phase 2 (May 2013-Nov 2013)²⁸: The team will analyze feedback from Phase and will begin working on an integrated safeguard policies framework to be presented to the Board of Executive Directors in the second half of 2013.
- Review and Update Phase 3 (Dec 2013-Jun 2014)²⁹

This review and update provides the WB with an opportunity to build on its current safeguard policies, improve coverage and environmental and social risks, deliver better social and environmental outcomes across its projects and programs, as well as strengthen country systems and institutions. Although Finland has not participated in Review and Update Phase 1, which included interviews with experts and stakeholders, Phase 2 provides an opportunity for Finland to be consulted and discuss the draft integrated framework with the review and update team.

- ***In these discussions, Finland should particularly emphasize the importance of discussions surrounding Free, Prior and Informed Consent vs. Free, Prior and Informed Consultation.*** As noted in Section 6.3.2. Indigenous Peoples & REDD+, FPIC can act as a form of legal empowerment for indigenous communities and is integral to their full and effective participation. However, while indigenous peoples' representatives have fought hard to include FPIC in FIP processes, their efforts and proposed references to FPIC were replaced with the WB accepted 'Free Prior and Informed Consultation'. ***In workshops, such as the one outlined below (to be held by the FCPF's Carbon Fund in September), Finland should encourage the streamlined application of FPIC guidelines between UN-REDD, FPCF, and REDD+ Partnerships so as to ensure the inclusion of free, prior and informed consent, as opposed to free, prior and informed consultation.***

²⁸ Consultation Period Dates are to be confirmed.

²⁹ Ibid.

Partnerships

Partnerships with NGOs and research institutions may not only serve as channels, but also as a basis on which to build Finnish foreign policy in the context of REDD+. This includes information exchange, data-collection, and sharing. Partners may provide relevant data and information on stakeholder engagement processes in a more systematic matter. At the same time, partnership may provide NGOs, on the ground, with opportunities to build capacity among various actors, including indigenous peoples and local communities. In this regard, Finland should continue to partner with PROFOR, while also engaging with organizations that are specifically dealing with issues focusing on indigenous peoples and women.

- ***In these partnerships, Finland should encourage the following: information and data coordination (including sex-disaggregated data); complimentary research; as well as workshops and seminars.*** As indigenous women's capacity to participate in decision-making processes is difficult, ***Finland should also aim to focus its partnerships on empowering indigenous women. Examples of potential partnerships include:***
- **General:** *The Program on Forests (PROFOR)* was established in 1997 as a donor-funded programme managed by the World Bank. Its primary aim was to support in-depth analysis, innovative processes, knowledge sharing and dialogue. It focuses on four themes, in particular: livelihoods, governance, financing sustainable forest management, and mechanisms for coordinating policies across sectors. Finland's Department for International Development Cooperation is a donor.³⁰
- **Indigenous Peoples:** *IWGIA* currently implements a project titled "Climate Change Partnership with Indigenous Peoples: Promoting rights-based, equitable and pro-poor REDD+ in South and Southeast Asia", which seeks to strengthen indigenous peoples' capacity and provide them with the necessary information and access to decision making to empower them to actively advocate for the recognition and protection of their rights in REDD+. Thus, the aim of the project is to ensure that indigenous peoples have the tools and influence they need to assert the rights that are enshrined in UNDRIP both within global and national REDD+.
- **Women:** Gender sensitive REDD+ initiatives have the potential to become effective strategies for conservation, poverty reduction and climate mitigation, while also helping to decrease existing gender gaps. Including a gender perspective into REDD+ would ensure that frameworks "respect international law instruments and human rights standards" (e.g. CEDAW) and allow for the inclusion of a wealth of women's unique knowledge, skills, and experience that may be vital to successful REDD-related initiatives. Consequently, REDD+

³⁰ In 2012, Finland's Department for International Development Cooperation provided EUR 800 000 to FAO/National Forest Programme Facility at the World Bank/PROFOR. Access at: <http://bit.ly/1bCYV9A>.

must be linked to CEDAW, similarly to how indigenous peoples have linked REDD+ to UNDRIP and ILO 169. Moreover, **states must develop REDD+ strategies that address gender considerations with sex-disaggregated data** that can help ensure accuracy in defining problems (e.g. drivers of deforestation), defining new opportunities, highlighting best practices, and setting guidelines for incorporating gender perspectives from the outset. An initiative (2011) by the **IUCN Pro-Poor REDD+ project**, with funding from the Danish International Development Agency (DANIDA) and joint implementation with the Women's Environment and Development Organization (WEDO), aimed at delivering roadmaps to help guide the design and implementation of gender-sensitive REDD+ strategies. WEDO, in cooperation with NORAD and the Ford Foundation, recently published ***From Research to Action, Leaf by Leaf: Getting Gender Right in REDD+ SES***, which aims to present a full analysis (e.g. lessons learned, etc) of the gender dimension of REDD+ to policy-makers, program developers, and various other practitioners.

Research and Data

The collection, analysis, and utilization of data in assessing drivers of deforestation and degradation, contributors to sustainable forest management, conservation, and the enhancement of forest carbon stocks are paramount in developing effective policies. Moreover, data helps clarify differential access and strategic need, especially with regard to women and indigenous peoples. Sex-disaggregated data is, thus, particularly important.

- **Access to Near-Real-Time Deforestation Data:** As a leader in technology and communication, Finland should contribute to the development of and partake in the pilot testing period of ***Global Forest Watch 2.0 (GFW 2.0)***, a near real-time forest monitoring system that combines satellite technology, data sharing, and global human networks to fight deforestation. Developed under the auspices of the World Resources Institute (WRI), this tool can provide governments, companies and communities with up-to-date information regarding deforestation and, thereby, help monitor and manage forest resources. This is particularly crucial as data regarding forests is often out of date and difficult to collect on a global scale. Converging human networks and technologies can help address many forest-related challenges. ***Finland should ensure that actors – at all levels of government, NGOs, as well as indigenous and local communities – participating in REDD+ have access to GFW 2.0 in order to 1) track changes; 2) effectively participate in decision-making processes; as well as 3) hold decision-makers accountable.***
- **Research Networks for Information-Sharing:** In order to ensure quality research on REDD+ related issues, ***Finland should develop a research network, akin to the Norwegian Research Network, in honing and sharing its forestry expertise to base future foreign policy regarding REDD+ on.*** Norway

has successfully established the collaborative Norwegian REDD Research Network, which includes interdisciplinary researchers at Norwegian research institutions who are working on and are interested in REDD-related research. The research undertaken in this network significantly shapes Norway's bilateral relations with forest-rich developing countries. Such a research network allows Norway to not only contribute financially to REDD+ projects, but to also support advocacy work and build capacity.

Indigenous Peoples

- ***Practical Approaches to Ensuring the Full and Effective Participation of Indigenous Peoples in REDD+***: Decisions taken within UNFCCC influence national policymaking on REDD+ and the institutional structures and mechanisms for its implementation. Indigenous peoples need to be involved in national processes. However numerous questions on how to make indigenous peoples' participation in national policy-making and REDD+ strategies meaningful remain. "Methodologies and approaches such as community participatory monitoring, participatory mapping of forests in Indigenous Peoples' territories, human-rights and ecosystem-based approach should be employed in implementing REDD+."³¹ Consequently, ***representatives of the Finnish Foreign Ministry have been cordially invited to attend a Joint Expert Workshop (maximum of 60 persons) on Practical Approaches to Ensuring the Full and Effective Participation of Indigenous Peoples in REDD+: Discussion of Experiences and Lessons to Date, to take place on September 10th-12th, 2013, in Weilburg, Germany.*** This workshop, co-sponsored by the FCPF, BMZ (Germany's Federal Ministry of Economic Cooperation and Development), and UN-REDD will provide an opportunity for specialists on REDD+ Consultation/Participation and indigenous peoples to share experiences and discuss lessons in local- and national-level participatory processes for REDD+ involving indigenous peoples.
- ***Self-Determination: FPIC, Tenure Rights, and Indigenous Women. Part 1:*** Self-determination is and should continue to be a concern for both indigenous communities and REDD+ organizations. Indigenous rights advocates consider self-determination to be the basis for FPIC. However, according to international human rights jurisprudence, FPIC is legally based on property rights, cultural rights, and the right to non-discrimination. While these rights recognize a collective element in the case of indigenous peoples they have an individual rather than a collective basis. FPIC has also been adopted as a part of the biodiversity regime where it is not directly rooted to the question of self-determination, but rather acknowledges that indigenous peoples, as holders of traditional knowledge, may provide a valuable contribution to biodiversity

³¹ Lang. "REDD at COP18, Doha: What's on the agenda?"

protection and should, thus, participate and share the benefits of the use of, for instance, genetic resources. The question of whether FPIC should be directly linked to self-determination or whether it is, in fact, more meaningful to speak of an inherent part of the right to cultural integrity must be further examined. The role of indigenous women, particularly in the context of REDD+, should be further examined as they are often faced with trade-offs between indigenous rights (as a collective) and gender rights (as individuals) with regard to land ownership and tenure. See Section 2.6.6. Intersectionality: The Role of Indigenous Women for more information. ***Finland should, thus, advocate that women are guaranteed proper tools to intervene on their territories.***

Part 2: Moreover, issues of land ownership and tenure, particularly regarding indigenous women, must be resolved prior to REDD+ agreements in order to prevent the exacerbation of land conflicts resulting from increased economic value attached to REDD+ forest lands. Tenure issues should be addressed in an effort to secure the official recognition of women's rights to forest products and carbon. It is key to align the incentives of investors and local communities. ***Finland should, thus, undertake a research programme that helps design and strengthen the empirical case for women's tenurial land ownership rights.***

Key General Recommendations

For a comprehensive list, see section 7 on General Recommendations.

Research on Human Rights, Environment Sustainability and Climate Change

- The MFA should encourage representatives, as well as researchers at Finnish institutions to actively participate at the **3rd Yale/UNITAR Conference on Environmental Governance and Democracy** that will focus on the interface of human rights, environmental sustainability, and climate change, scheduled to take place in 2014. The following areas, among others, have been identified (2013 Workshop at Yale) as necessary in furthering research on rights and environmental governance:
 - The *distinctive* role and influence of rights in environmental governance, such as “case study research that compares processes of change, empowerment, and mobilization in environmental governance with variations in the legal recognition of environmental rights.”
 - Factors that may hinder the effectiveness of rights in particular contexts.
 - The link between environmental and social movements that support human rights, as well as the indigenous peoples' and forest dependent communities' rights (e.g. tensions, synergies, and misunderstandings).
 - Ethical challenges associated with defining environmental rights in a manner that excludes or negatively affects groups who are not defined as right-holders in a particular context (e.g. indigenous women).

Existing national and global institutions have not been designed in a manner that allows for the effective pooling and management of transboundary resources. Furthermore, national regulatory systems and accountability mechanisms are often weak. Issues regarding ownership, access to regulation and various resources, as well as participatory rights, are fundamental and must be examined closely. In order to achieve effective results, there must be system-wide coherence whereby cooperation between UN institutions and IFIs (WBG, IMF, WTO) is strengthened through both formal and informal ties.

Partners

- The MFA, as its key funder, should work closely together with KIOS in promoting the realization of human rights, particularly supporting human rights projects focusing on women, indigenous peoples, and indigenous women in the context of climate change and sustainable development. For example, KIOS has stated that, linking environmental issues and KIOS' project would help strengthen their existing work. However, this would require additional information regarding the link between climate change, human rights, and vulnerability. In this regard, the MFA should share relevant information in the development of new projects and when designing projects in cooperation with partners, like KIOS.

Aarhus Convention

- Finland should fully participate in activities supported by the secretariat of the Aarhus Convention to ensure the full implementation the principles of the Aarhus Convention in International Forums. Finland, through its Aarhus Convention Focal Point (currently Ms. Eija Lumme), should implement the activities suggested by the Aarhus Convention, including reporting back through its best practices and of challenges faced in the implementation of the obligations under Article 3.7 as well as raising awareness within the relevant services of the existence of this legally binding obligation and on how its implementation relates to the priorities identified for Finland's Human Rights policy.

Indigenous Women

- Finland should encourage the development of a human rights framework that both accounts for indigenous self-determination and the human rights violation of indigenous women, which would contend that indigenous self-determination, cannot be achieved without accounting for pressing issues that involve indigenous women's social, economic, civil and political rights. Finland should, thus, also take on intersectional analysis as a lens through which climate change policies may and should be viewed in the future. Intersectional analysis is

particularly useful in addressing people's unique discriminatory experiences, especially those not captured by the existing human rights approach.

- ***Finland should encourage indigenous women to strengthen their alliance/coalition position prior to official meetings (e.g. at regional, national, and inter-sessional debates), so that women are not called into order by men who leading the process (e.g. at the COP).*** This must take place at the international level through the support of indigenous women's representation. This is likely to have a trickle-down effect to the regional, national, and local level. This has been seen in the case of Sami women, who are increasingly involved in Sami politics via various channels – from organizations and institutions at the local and national to the international level. ***Participation is also often based on quotas and yet little research has been done on how quotas affect minority women, including indigenous women. According to Hughes³², minority women are particularly underrepresented in high-level political positions globally. While*** dual identities (e.g. indigenous women) can benefit from both gender and minority quotas by emphasizing their gender or minority status in different institutional contexts, they often benefit from neither. National gender quotas are particularly effective in advancing minority women's representation because they reach across all political parties in a system. By 2008, over 100 countries had adopted gender quotas in some form or another. However, minority quotas are still uncommon. Consequently, it is important to note that gender quotas alone may not aid indigenous women. Tandem quotas (minority and national gender quotas together) increase the political representation of minorities. ***Consequently, Finland should encourage the use of tandem quotas as a basis for including indigenous women in decision-making processes.*** See section 2.6.6. Intersectionality: The Role of Indigenous Women.

³² Hughes, Melanie M. (2011) "Intersectionality, Quotas, and Minority Women's Political Representation Worldwide", *American Political Science Review*, 1.

Chapter 1. Introduction

1.1. Climate Change Consequences

Climate change is a complex systemic change with unequivocal and accelerating implications that demonstrably manifesting themselves in many forms – biodiversity and crop loss, as well as system transformations. ***These include both slow-onset hazards and rapidly unfolding phenomena that are transboundary in nature. Its effects are all largely*** attributable to increased atmospheric concentrations of greenhouse gases (GHG) resulting from human activity. Although all areas experience climate change, several regions experience acute consequences. These include, among others, Saharan Africa, the Himalayas, coastal areas, and Small Island States³³. A rise above 1.5° Celsius³⁴, while possibly safe from a global perspective, may already be disastrous for the most vulnerable within these areas, such as in the Arctic region where temperatures are rising at almost twice the rate.³⁵

Globally, climate change has significant and often negative implications on the lives and livelihoods of individuals, including over 300 million indigenous peoples worldwide.³⁶ Rising sea-levels, storms, and hurricanes directly lead to flooding, the salination of fresh-water resources, and population displacement, while also diminishing habitable land.³⁷ Receding coastlines, as well as permafrost melting, damage land, homes and other infrastructure.³⁸ Meanwhile, the loss of glaciers and reductions in snow cover decrease water availability. Droughts, land degradation, desertification, tropical cyclones, heat-related mortality, shrinking farmlands, a decline in soil fertility, as well as decreased crop yields and food security³⁹ are additional consequences resulting from climate

³³ Here, climate change is a biophysical, as well as a socio-political and institutional factor that affects already-stressed livelihoods (eg temperature variation and change, precipitation, etc). In Adger, WN. (2006) “Vulnerability”, *Global Environmental Change* 16 (3): 268–281.

³⁴ The threshold at which it becomes difficult to avoid the rapid reversal of human development, the earth’s temperature is set to rise 1.4 to 5.8 degrees Celsius by 2100. See: <http://www.guardian.co.uk/environment/2011/jun/01/christiana-figueres-climate-2c-rise>; See also: http://unfccc.int/key_steps/cancun_agreements/items/6132.php.

³⁵ According to the Arctic Climate Impact Assessment (ACIA), the Arctic will experience more rapid changes than the global average. Consequently, the historical resilience of Arctic indigenous peoples will not only be tried in the future, but is already being tested today. ACIA footnote would be better Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 1; Cameron, E. (2011) Development, climate change and human rights: From the Margins to the Mainstream? Social Development Working Paper 123, World Bank, Washington DC.

³⁶ Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 1.

³⁷ Kravchenko, Svitlana, Procedural Rights as a Crucial Tool to Combat Climate Change (October 27, 2010). Georgia Journal of International and Comparative Law, Vol. 38, No. 3, Spring 2010, 614. Available at SSRN: <http://ssrn.com/abstract=1698828> or <http://dx.doi.org/10.2139/ssrn.1698828>.

³⁸ Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”, 10.

³⁹ Climate change will reduce vulnerable groups’ capabilities to ensure their right to food. This notion was reinforced in a stakeholder consultation with KIOS, the Finnish NGO Foundation for Human Rights, which noted that such consequences require structural changes to the global development agenda so as to enable

change.⁴⁰ The International Panel on Climate Change (IPCC) has projected that such environmental changes will result in increased death, malnutrition,⁴¹ and injury.⁴² This includes disorders impacting child growth and development, morbidity and mortality related to ground-level ozone, diarrheal, cardio-respiratory, and infectious diseases, as well as the spread of malaria and other vector borne diseases.⁴³

According to the IPCC, “the impact of climate change will fall disproportionately upon developing countries and the poor persons within all countries...”⁴⁴ Such climate change-related consequences pose both direct and indirect threats to human rights.⁴⁵ Capturing a central challenge of our time, climate change is predicted to be life altering “far beyond any environmental problem [that] the international community has yet confronted.”⁴⁶ For example, in cases where climate change negatively impacts human settlements and agricultural production, it also limits household resources and individuals’ ability to meet every day needs, thereby jeopardizing their right to life, right to food, right to water, and right to housing. Additionally, the loss of cultural activities, such as subsistence harvesting, may lead to psychological stress, anxiety, and uncertainty for all peoples.⁴⁷ These effects will be felt most deeply by those who are already vulnerable owing to socio-economic factors;⁴⁸ individuals, such as indigenous peoples or inhabitants of low-lying coastal or island nations, whose lifestyles are inextricably linked to nature.⁴⁹

The dynamics of climate change – including exposure, vulnerability⁵⁰, intensity, frequency, regularity, and predictability – vary within states, as well as between states and

sustainable farming and food production in the short- and long-term. Written copy of the interview with the authors.

⁴⁰ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 1.

⁴¹ Rising surface temperatures spread diseases (such as typhus, diarrhoeal and other mosquito-borne diseases).

⁴² Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 13; Between 2000-2004, approximately 262 million people were annually affected by climate change disasters. According to the UNDP, 98 percent of these persons live in the developing world. In Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 28.

⁴³ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 13 and 16.

⁴⁴ IPCC, 2001; Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 25.

⁴⁵ Direct impact includes factors affecting health and extreme events on lives, livelihoods and human settlements. Indirect impacts affect food security, as well as economic activity based on natural resources. In *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 38.

⁴⁶ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 10.

⁴⁷ Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 31.

⁴⁸ Cameron, Edward. (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development, pp. 17-18; UNFCCC AWG-LCA 2010.

⁴⁹ Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”, 8; McNerney-Lankford, Siobh n. (2009) “Climate Change and Human Rights: An Introduction to The Legal Issues”, 33 *HARVARD ENV. L.REV.*, 431.

⁵⁰ A function of “exposure of the community to climatic conditions and adaptive capacity to deal with such conditions” with both human and bio-physical determinants playing a role at multiple spatial and temporal

regions.⁵¹ Despite being provoked biophysically, climate vulnerability is, in part, socially and institutionally determined. Exacerbating existing vulnerabilities, climate change perpetuates its drivers through systems and institutions that were built to sustain human health and well-being – from ecosystems, livelihoods and employment to social services.⁵² It reduces opportunities regarding livelihoods and stresses existing social institutions.⁵³ Consequently, a lack of progress in any or all fields can and will hamper progress overall.⁵⁴

Population segments will experience differential impacts both among states (e.g. the adaptive capacity of marginalized populations in Bangladesh and the Netherlands in coping with sea level rise) as well as within them (e.g. incomes derived from land versus non-land related activities; or with regard to men and women's participation in decision-making processes).⁵⁵ Already marginalized groups – who have contributed least to carbon emissions, but are most vulnerable – will thus be pushed closer to the edge. However, already marginalized groups often lack the necessary tools (financial and technological) to mitigate and adapt to climate change implications. These are often contextual, resulting from socio-economic factors and compromising the human rights of such groups. Socio-economic factors serve as a proxy indicator for (and may reinforce) the predisposition of lives and livelihoods “to be adversely affected”, and emphasize that not all states, nor subgroups, are placed similarly when it comes to decision-making on environmental governance and climate change, in particular.⁵⁶ These include economy (financial wealth

scales. To date, the UNFCCC has introduced vulnerability language by calling for attention to particularly vulnerable regions, including the Arctic. In Smit, B and O Pilifosova (2003) “From Adaptation to Adaptive Capacity and Vulnerability Reduction”, in Smith, JB, RJT Klein, and S Huq (eds.) *Climate Change, adaptive capacity and development*, London: Imperial College Press, pp 1-20; Aguilar has noted that, vulnerability is largely dependent on physical, financial, human, social, and natural assets. Aguilar, Lorena. “Linking Gender and Climate Change”, IUCN and GGCA; Furthermore, vulnerability is derived from *vulnerabilis*, a term used by the Romans to describe an already-wounded soldier laying on the battlefield and at risk from further attack; UNFCCC. (1992), UN Framework Convention on Climate Change, New York, 9 May 1992, (enforced: June 28, 2002), art. 3.2; Smit, B, and J Wandel. (2006) “Adaptation, adaptive capacity, and vulnerability”, *Global Environmental Change* 16, 282-292; Ford, JD. (2009) “Dangerous climate change and the importance of adaptation for the Arctic’s Inuit population, *Environmental Research Letters*, 4.

⁵¹ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 10.

⁵² This includes access to institutions, social networks, and material endowments. In Andersson, Krister, and Elinor Ostrom. (2008) “Analyzing decentralized resource regimes from a polycentric perspective,” *Policy Sciences*, Springer, vol. 41(1), 89; World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 26, access at: <http://www.who.int/globalchange/mediacentre/events/2011/social-dimensions-of-climate-change.pdf> (last accessed: July 17, 2013); Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) “Climate Change and Human Rights” in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 296.

⁵³ Agrawal, Arun. (2008) “The role of local institutions in adaptation to climate change.” Washington DC: World Bank, 8-9.

⁵⁴ Vesa, Unto. (2012) “Finland in the United Nations: Consistent and Credible Constructivism”, 2 *Finnish Foreign Policy Papers*, The Finnish Institute of International Affairs, 18; MILLENIUM DECLARATION focuses on this, among other documents. See here: <http://www.un.org/millennium/declaration/ares552e.pdf>

⁵⁵ Caesens, Elisabeth, and Maritere Rodr guez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 45.

⁵⁶ Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) “Climate Change and Human Rights” in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 295; For example,

or poverty; differential livelihoods), social (education, health), geography⁵⁷, demography (e.g. age, gender⁵⁸, etc.), sexual orientation, disability, culture, institutional (structural obstacles), indigenous or minority status, governance, ethnicity, social class and caste, and environmental factors.⁵⁹

Groups' vulnerability to both predictable and unpredictable impacts are dependent on combinations of assets: human capital (e.g. training, skills and knowledge); social capital (e.g. relationships and institutional access); financial capital (e.g. liquid and non-liquid assets); and natural capital (e.g. natural resources).⁶⁰ However, marginalized groups often do not have the opportunity to draw upon existing capital, assets, and institutional networks in times of stress.⁶¹ Consequently, efforts to reduce vulnerability and enhance adaptive capacity⁶² must address social processes, such as structural inequalities that lead to vulnerability in the first place.⁶³ Institutional linkages are critical to adaptation⁶⁴ because

between 2000 and 2004, an estimated 262 million individuals were annually affected by climate disasters. Of these persons, 98 percent were in developing countries.

⁵⁷ "[V]ulnerability due to geography is often compounded by a low capacity to adapt," meaning that the poor are especially affected. In Limon, Marc. (2009). "Human Rights and Climate Change: Constructing a Case for Political Action", 2 *Harvard Environmental Law Review* 33, 447.

⁵⁸ Gender captures the ascribed, social nature of distinctions between women and men – the cultural baggage or signifiers associated with biological sex. 'Gender' draws attention to aspects of social relations that are not based on differences based on sex, but are rooted in cultures and attitudes which are socially constructed and can accordingly change over time. "Gender", Our Work, Minority Rights Group International, access at: <http://www.minorityrights.org/6861/thematic-focus/gender.html>; Field, Christopher B. (2012) *Managing the risks of extreme events and disasters to advance climate change adaption*. New York: Cambridge University Press, 5;

⁷⁶ McInerney-Lankford, Siobh n. (2009) "Climate Change and Human Rights: An Introduction to The Legal Issues", 33 *HARVARD ENV. L.REV.*, 436; Limon, Marc (2009). "Human Rights and Climate Change: Constructing a Case for Political Action", 2 *Harvard Environmental Law Review* 33, 447-448; Agrawal, Arun. (2008) "The role of local institutions in adaptation to climate change." Washington DC: World Bank, 18; Specific examples of determinants of vulnerability include the price of food crops and the number of available storm shelters for coastal communities. In Nick Brooks, W. Neil Adger, P. Mick Kelly. (2005) "The determinants of vulnerability and adaptive capacity at the national level and the implications for adaptation", 2 *Global Environmental Change* 15, 153; World Health Organizations. (2011) "Gender, Climate Change and Health", 5.

⁶⁰ Agrawal, Arun. (2008) "The role of local institutions in adaptation to climate change." Washington DC: World Bank, 13-14; Barnett, Jon. "Human Rights and Vulnerability to Climate Change", 257, In Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press.

⁶¹ Agrawal, Arun. (2008) "The role of local institutions in adaptation to climate change." Washington DC: World Bank, 12.

⁶² The ability or potential of a system to respond successfully to climate variability and change, including adjustments in behavior and in resources and technologies. This "is dependent on managerial abilities, access to financial, technological and information resources, infrastructure, institutional and political environment." Adaptive capacity must address pertinent and locally identifiable vulnerability by including local stakeholders. In IPCC 2007: 720-727; Koivuova, Timo, Adam Stepien, Anna Gremserger, and Henna Niemi. (forthcoming in 2013) "Arctic Indigenous Peoples and the Challenge of Climate Change" in *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*, Krämer and Cavalieri (eds.); Smit, B and O Pilifosova (2003) "From Adaptation to Adaptive Capacity and Vulnerability Reduction", in Smith, JB, RJT Klein, and S Huq (eds.) *Climate Change, adaptive capacity and development*, London: Imperial College Press, pp 1-20; Carmack, E, F McLaughlin, G Whiteman, and T Homer-Dixon (2012), "Detecting and coping with disruptive shocks in Arctic marine systems: a resilience approach to place and people", *Ambio*, 56-65.

⁶³ Agrawal, Arun. (2008) "The role of local institutions in adaptation to climate change." Washington DC: World Bank, 17.

they affect resource flow and, in turn, influence individual and groups' access.⁶⁵ Political structures, rules, social and cultural norms influence adaptation and climate vulnerability in three ways: (1) structural impacts on vulnerability; (2) mediating between individual and collective responses; and (3) facilitating adaptation – delivering and governing external access to resources.⁶⁶ For example, policies can systematically include or exclude marginalized groups and may, in turn, reinforce existing inequalities. They may enhance social cohesion and reshape how institutions function in line with principles of good governance, can empower individuals, and reduce vulnerability to climate change.⁶⁷ Human rights may serve as “a compass for [such] policy orientation.”⁶⁸ Thus, understanding the link between climate change and human rights, and the role that institutions can play in influencing various groups' access to the necessary tools to mitigate and adapt to the implications of climate change, is important.⁶⁹

As will be outlined, the link between human rights and the environment is reflected in the number and scope of international and domestic laws⁷⁰, judicial decisions, and academic studies.⁷¹ However, there are still many unresolved issues surrounding this discourse. Consequently, in light of the Human Rights Council's decision to establish a mandate on human rights and the environment⁷² and the appointment of Mr. John Knox to a three-year term⁷³ as the first Independent Expert on human rights obligations relating to

⁶⁴ A process, action, or outcome in a system in order for the system to better cope with, manage or adjust to some changing condition, stress, hazard, risk or opportunity.” In Pearce, T, JD Ford, F Duerden, B Smit, M Andrachuk, L, Berrang-Ford, and T Smith. (2010) “Community Collaboration and climate change research in the Canadian Arctic”, *Polar Research* 28, 10-27.

⁶⁵ Agrawal, Arun. (2008) "The role of local institutions in adaptation to climate change." Washington DC: World Bank, 29.

⁶⁶ Ibid 2.

⁶⁷ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 23.

⁶⁸ In Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press, 19.

⁶⁹ Agrawal, Arun. (2008) "The role of local institutions in adaptation to climate change." Washington DC: World Bank, 8, 15, and 50.

⁷⁰ Many states have incorporated rights to a ‘healthy’, ‘decent’, or ‘viable’ environment in their constitutions.

⁷¹ "Independent Expert on Human Rights and the Environment" *Office of the High Commissioner for Human Rights*, access at: <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/IEenvironmentIndex.aspx> (last accessed: 24 June 2013).

⁷² The mandate will, among other things, study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and promote best practices relating to the use of human rights in environmental policymaking. In this regard, John Knox has stated: “[it is] important to honour human rights, respect human rights, in order to be able to safeguard the environment, but many things about that relationship remain unclear...part of my mandate is to examine that. A second, big aspect, of the mandate is to look at best practices. Many, many states – over 90 – now have recognized a right to a healthy environment in their own constitutions. Many other states are using human rights law in their domestic laws to try and further their efforts to have a strong environmental policy. So, one aspect of the mandate is to look at what these states are doing and share that so that other states know and can learn lessons, valuable lessons, from the experience of these states. It's become clearer and clearer that, in many ways, how we treat the environment directly affects our own enjoyment of human rights...There is much less doubt now, than there used to be, that there is in fact a relationship and it's an important one...efforts to protect the environment must go beyond boundaries.” Access at: <http://www.youtube.com/watch?v=Yi9XfXhQoeE> (last accessed: 15 June 2013).

⁷³ The first independent expert was appointed in August 2012. He subsequently submitted his first report to the 22nd session of the Human Rights Council in March 2013. Access at: <http://daccess-ods.un.org/TMP/6934136.7483139.html> (last accessed: 24 June 2013).

the enjoyment of a safe, clean, healthy, and sustainable environment, this MFA commissioned report is timely.

1.2. Mitigation & Adaptation

The associated implications of climate change range from short-term natural disasters to long-term health effects. Certainty, thus, lies in the knowledge that carefully designed mitigation and targeted adaptation measures, globally to locally, must take place.⁷⁴ The development of such measures depends on social, political, and economic conditions and institutions that shape norms and rules. However, both mitigation and adaptation policies may lead to maladaptation and risk reinforcing existing socio-economic factors, waste time and expenses, violate human rights, and undermine institutional, as well as national, objectives.⁷⁵ ⁷⁶ By basing mitigation (incremental reductions in greenhouse gas emissions) and adaptation (long-term planning and sustainable development) policies on a human rights framework can help ensure that these policies are designed and implemented in a manner that prioritizes vulnerable peoples.⁷⁷

To date, Finland has implemented climate policy with the objective of mitigating climate change and reducing of greenhouse gas emissions.⁷⁸ Furthermore, its national adaptation strategies have focused on capacity building and vulnerability assessments in partner countries.⁷⁹ Its National Strategy for Adaptation to Climate Change, adopted as an independent section of the National Energy and Climate Strategy in 2005, outlined adaptation measures across fifteen sectors until 2080.⁸⁰ These measures aimed to reinforce and increase adaptive capacity for climate change, while also mitigating societal costs: ensuring that climate change adaptation is incorporated in sector's regular planning; ensuring that the implementation and development of processes in preparation for extreme events and assessments are incorporated in long-term planning and investments; developing existing and new observation and warning systems; implementing the Climate Change Adaptation Research programme 2006-2010; preparations for changes in an international operating environment; and a revision of the adaptation strategy in 2011-

⁷⁴ Geographically, mitigation benefits are global while adaptation policies are focused locally.

⁷⁵ It is not within the scope of this paper to examine potential unintended consequences resulting from such climate change policies. In Sovacool, Benjamin K. and Marilyn A. Brown. (2009) "Scaling the Policy Response to Climate Change," Policy and Society 27: 325; UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 14.

⁷⁶ Additionally, considering that most climate policy is still in the preliminary stages of developing and implementing its strategies, the pool of relevant case studies would be fairly limited in scope *Ensuring gender equity in climate change financing*. (2011) New York, N.Y.: United Nations Development Programme, 14.

⁷⁷ Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-Böll-Stiftung, 11.

⁷⁸ It signed the UNFCCC in June 1992, whose respective legislation entered into force in 1994. In 2002, Finland ratified the Kyoto Protocol and has been actively working toward fulfilling its commitments under these treaties. Finland's Fifth National Communication under the United Nations Framework Convention on Climate Change. 2009. Ministry of the Environment and Statistics Finland, Helsinki.

⁷⁹ Finland's Fifth National Communication under the United Nations Framework Convention on Climate Change. 2009. Ministry of the Environment and Statistics Finland, Helsinki, 25.

⁸⁰ Ministry of Agriculture and Forestry of Finland. (2005) "Finland's National Strategy for Adaptation to Climate Change"; Its National Strategy for Adaptation to Climate Change was adopted in 2005 as an independent section of the National Energy and Climate Strategy.

2013.⁸¹ Additionally, Finland's National Action Plan (2012 to 2016), as well as its foreign and security policy, highlight the interdependence of peace and security, economic, social and sustainable development; democracy and human rights; the rule of law and international law; as well as crosscutting objectives like gender equality, the reduction of inequality, and climate sustainability.⁸²

1.3. Finland's Human Rights Policy

Finland's international human rights policy—founded on the UDHR, human rights conventions, and internationally binding human rights documents and premised on the universality⁸³, indivisibility, and interdependence of human rights⁸⁴, including equal rights implementation, irrespective of ethnic origin, gender, age, religion, opinion, and sexual orientation – serves as an instrument for creating a more just, secure, and humane world through the improvement of human rights internationally. Finland, thus, promotes democratic structures and processes of international law that both strengthen and safeguard human rights. It stresses the importance of multilateral cooperation, well-functioning institutions and processes, as well as international rule of law.

In this regard, Finland's supports the incorporation of a human rights based approach (HRBA)⁸⁵ across all UN activities, as well as between UN agencies, and pays particular attention to the prevention of multiple discrimination, striving to promote the rights of women and indigenous peoples, among other vulnerable groups and minorities⁸⁶.

⁸¹ See Committee for Preparing the Fifth National Communication. (2009) "Finland's Fifth Communication under the United Nations Framework Convention on Climate Change", Ministry of the Environment and Statistics Finland.

⁸² As noted earlier, it also aims to protect and promote the rights of, among others, women, children, indigenous peoples, persons with disabilities, as well as persons belonging to sexual and gender minorities. In Finland's Fifth National Communication under the United Nations Framework Convention on Climate Change. 2009. Ministry of the Environment and Statistics Finland, Helsinki, 190.

⁸³ The universality of human rights was reaffirmed at the 1993 World Conference on Human Rights in Vienna. The document affirms that states are responsible for the protection, respect and promotion of all human rights and fundamental freedoms irrespective of political, economic or cultural systems. Human rights must thus be examined consistently and based on international standards. In Ministry for Foreign Affairs of Finland (14/2009) "Government Report to Parliament on the Human Rights Policy of Finland", 7; It also demands that positive steps be taken in ensuring the respect of indigenous peoples' human rights, including their participation in matters concerning them. In Barsh, R.L., 'Indigenous Peoples in the 1990's: From Object to Subject of International Law?' *Harvard Human Rights Journal* 33 (1994), reprinted in L. Watters (ed.), *Indigenous Peoples, the Environment and Law*, Carolina Academic Press, North Carolina (2004), pp.15-42, at 23.

⁸⁴ Ministry for Foreign Affairs of Finland (2009) "Government Report to Parliament on the Human Rights Policy of Finland" 14, 7 and 9.

⁸⁵ "[A] rights-based approach, properly implemented, should facilitate the achievement of an ecologically-sustainable environment, inter- and intra-generational equity and respect for the intrinsic value of nature. In sum, this approach puts an emphasis on environmental protection and the livelihoods and human rights aspects of projects, programmes and activities." In OHCHR and UNEP. (2012) "Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP" (Background Document), OHCHR-UNEP Joint Side Event, "Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1", United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 37.

⁸⁶ For a more detailed account of Finland's Minority Rights Policies to date, including policies regarding the Sami, see: <http://www.minorityrights.org/1488/finland/finland-overview.html>. For more information on cultural minorities in Finland see: Pentikäinen, J. and Hiltunen, M. (eds), *Cultural Minorities in Finland*,

Moreover, it aims to foster both civil and political rights, on the one hand, and advocate for economic, social, cultural rights, on the other. This human rights policy is based on the premise that all states and people have an equal opportunity in the development of human rights standards, in decision-making on matters affecting them, as well as in the implementation of these decisions.⁸⁷ Furthermore, where no right can be exercised in isolation from the rest, particular rights may be regarded as collective, individual, and non-discriminatory in nature, based on interpretation.⁸⁸

In addition to contributing to the functioning of the Human Rights Council (e.g. intervening without the permission of the state in question in situations where human rights have been violated), Finland aims to devise new working methods for ensuring that the Council's activities provide added-value. It also seeks to clarify the role of both the Human Rights Council and Third Committee of the UN General Assembly in globally promoting human rights. Moreover, Finland reinforces the independent position of the UN High Commissioner for Human Rights, supporting the objective to shift priority from the creation of norms to their implementation. With regard to regional human rights agreements, Finland supports cooperation between UN agencies and regional actors. It also participates in developing a more comprehensive network of international agreements⁸⁹, and promotes the widest possible ratification and implementation of multilateral conventions.

Furthermore, in the context of climate change, focused action can prevent the direct and indirect discrimination of five marginalized groups – women, indigenous peoples, the child, persons with disabilities, and gender and sexual minorities – as prioritized by Finland's international human rights policy.⁹⁰ Finland's human rights track record and goals – its cooperation with partner states via multilateral funding arrangements and development cooperation, including targeted human rights projects – alongside its past and current adaptation and mitigation policies, provide a sound foundation for addressing the climate vulnerability of marginalized groups in various international regimes.⁹¹

Helsinki, Finnish National Commission for UNESCO, 1995; see also, Recommendations of the UN Forum on Minority Issues, now the main event on minority rights in the UN calendar, are agreed each year, and the recommendations from the last four years, on education, political participation, economic participation, and the rights of minority women, are available here: <http://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/ForumIndex.aspx>; see also the UN Secretary-General's Guidelines on Racial Discrimination and Protection of Minorities, published by a new UN Network on Racial Discrimination and Minorities, at: <http://www.ohchr.org/EN/Issues/Minorities/Pages/UNNetworkRacialDiscriminationProtectionMinorities.aspx>

⁸⁷ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 7.

⁸⁸ Ibid.

⁸⁹ This includes "the codification and progressive development of international law by participating in the work of the UN General Assembly Legal Committee (VI Committee), the UN International Law Commission and the specialised agencies."

⁹⁰ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 7 and 9; Finland's Ministry of Foreign Affairs places particular weight on the roles of women, children and indigenous peoples in adapting to and combating climate change. In Ministry for Foreign Affairs. (2012) "Finland's Development Policy Programme: Government Decision-in-Principle", 25.

⁹¹ Based on UN Security Council Resolution 1325, Finland aims to mainstream targeted actions and exerting political influence in bilateral and multilateral cooperation; Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 21, 22, 57, and 78.

Although this report will focus on women and indigenous peoples, it will also briefly outline some of the climate change implications faced by the latter three groups.

1.3.1. Finland's Human Rights Policy on Women

The Commission on the Status of Women has noted that climate change impacts on women require greater attention. Although climate change *per se* does not drive gender inequality, it increases the socio-economic factors pertaining to gender-gaps. Women are both agents (tools for climate smart choices) and victims of climate change. As agents, they often shoulder the heaviest burden of climate change consequences – they account for seventy per cent of the world's poor and are the primary producers of the world's staple crops, producing up to ninety percent of food for the rural poor and sixty to eighty percent of developing countries' fare.⁹² As victims, women's health is disproportionately vulnerable to the negative effects of climate change.⁹³

The *Government Report to Parliament on the Human Rights Policy of Finland* states that, "internationally, Finland would like to see a situation where Finland itself and also its partners endeavor to ensure that women can participate in decision-making in their own communities and in the society at large."⁹⁴ This includes, but is not limited to, women's participation in decision-making regarding climate change policy. Furthermore, in promoting *the rights of women*, Finland has committed to and emphasizes:

- **Participation:** Women's participation (especially women from least developed countries) in power structures, through international NGOs and development cooperation,⁹⁵ and in decision-making in international climate cooperation and negotiations (including international environmental agreements and conferences of parties to environmental agreements).⁹⁶
- **Gender Mainstreaming:** The mainstreaming of gender perspectives in national and regional level action plans, strategies and work programmes, such as the Climate Convention.
- **Land Rights:** The role of women with regard to environmental issues, such as the management of natural resources, land ownership, and men and women's equal right to own and inherit land and other property.⁹⁷ Women's right to own and

⁹² IUCN. (2007) "Gender and Climate Change: Women as Agents of Change", Climate Change Briefing, 1; Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 22.

⁹³For example, fifty percent of women living in developing countries suffer from anemia, making them more vulnerable to nutritional problems. In World Health Organizations. (2011) "Gender, Climate Change and Health", 3; However, both in developed and developing countries, evidence provides that droughts disproportionately increase suicide rates among male farmers. In IUCN. (2007) "Gender and Climate Change: Women as Agents of Change", Climate Change Briefing, 1.

⁹⁴ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 21.

⁹⁵ Ibid.

⁹⁶ Ibid 9, 21.

⁹⁷ Ibid 22.

inherit land and property is crucial, as they are a prerequisite for many other rights, including participation in political processes.⁹⁸

- **Resources:** The allocation of financial and expert support, including accessible funding arrangements covering the Climate Convention for women.⁹⁹ for local-level activities with the purpose of promoting the status of women.¹⁰⁰
- **Disaster Risk Reduction (DRR):** the strengthening of women's participation in the international cooperation with regard to disaster risk reduction in accordance with the Finnish National Action Plan for Disaster Risk Reduction (DRR).

This report will further examine climate change and women's rights in greater detail in the corresponding Section 2.6. Women's Right in Internatoinal Law.

1.3.2. Finland's Human Rights Policy on Indigenous Peoples¹⁰¹

As underlined by the Inuit Petition, *infra* Section 2.5. Indigenous Peoples Rights in International Law, climate change implications already seriously affect indigenous people's ability to maintain traditional livelihoods on a global scale. Its consequences amplify existing inequalities and particularly underline the link between indigenous peoples' rights, in general, and their rights to culture and the environment, in particular.¹⁰² Promoting the rights of indigenous peoples has been one of Finland's foreign policy priorities for many years, especially since Finland is one of the homes of the Sami.¹⁰³ In promoting the *rights of indigenous peoples*, Finland focuses its efforts on decreasing discrimination, while strengthening the status of indigenous peoples by implementing the objectives set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007.¹⁰⁴ The adoption of the UNDRIP by the UN General Assembly, a process that both the government of Finland and The Finnish Sámi Parliament (Saamelaiskäräjät) were actively involved in, served as a milestone for indigenous peoples' rights.¹⁰⁵ This declaration includes the principle of Free, Prior and Informed Consent (FPIC) whereby "a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use."¹⁰⁶ An additional and key international achievement in providing indigenous peoples

⁹⁸ Ibid 21.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Finland's Human Rights Policy (2009) only shortly mentions climate change in the Arctic as it relates to the Sami. A stronger focus needs to be given to this issue.

¹⁰² Cultural and environmental integrity go hand-in-hand and are an integral part of indigenous peoples' right to culture under international law. Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 3.

¹⁰³ The Sami are the European Union's only indigenous peoples.

¹⁰⁴ Finland continually partook in the negotiations for 2 years, consistently working for a satisfactory compromise for all parties involved. During this time period, the Finnish Sámi Parliament (Saamelaiskäräjät) was actively involved in national and international negotiation process. Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 35.

¹⁰⁵ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 35.

¹⁰⁶ Forest People Programme. Access at: <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>.

with participatory opportunities was the establishment of the United Nations Permanent Forum on Indigenous Issues (UNPFII)¹⁰⁷, a body that was vigorously promoted by Finland in 2002. Similar to other states, Finland partakes in the work of the UNPFII as an observer, while also providing its secretariat with economic support.¹⁰⁸

Finland continues to support existing UN bodies, focusing on issues related to indigenous peoples. Consequently, indigenous peoples' rights are a cross-cutting theme in Finland's development policy. Finland seeks to maintain preparatory planning, including training and information dissemination on the rights of indigenous peoples.¹⁰⁹ It, thus, aims to ensure indigenous peoples' participation in decision-making on issues that may adversely affect them. This includes climate change.¹¹⁰ Furthermore, Finland emphasises the role of indigenous peoples in:

- **Arctic Cooperation:** Promoting human rights as a part of Arctic cooperation, including the Arctic Council.
- **UN Bodies:** Supporting UN bodies, including UN human rights bodies, in work relating to indigenous peoples, as well as promoting indigenous peoples' rights at the UN and in bilateral relations.¹¹¹
- **Participation:** Providing proper participatory opportunities in decision-making and consultations relating to mitigation and adaptation measures related to climate change directly affecting indigenous peoples living conditions.
- **Intersectionality:** Promoting the roles of indigenous women and girls.
- **Development Cooperation:** In planning and preparing development policies.

This report will further examine climate change and indigenous peoples' rights in greater detail in the corresponding section 2.5. Indigenous Peoples Rights in International Law.

1.3.3. Other Vulnerable Groups

This report will only briefly examine the following three vulnerable groups: the child, disabled persons, and gender and sexual minorities. Despite such brevity, the authors encourage the MFA to undertake further research regarding the implications of climate change on these groups and, thus, provide a brief list of recommendations for each group.

1.3.3.1. The Child

Climate change should not only be conceptualized as an environmental issue, but also as a question of children's rights. Of the world's population, 2.2 billion individuals are under

¹⁰⁷ The UNPFII was established as an advisory body to the ECOSOC, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights, in 2002. For more information on the UNPFII, see: <http://social.un.org/index/IndigenousPeoples.aspx>.

¹⁰⁸ To date, the UNPFII has drawn attention to the implications of climate change, as well as the implementation of the MDGs on indigenous peoples' rights.

¹⁰⁹ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 34.

¹¹⁰ Ibid 10, 34.

¹¹¹ Ibid 34.

the age of 18, of which 85% live in developing countries.¹¹² The significance of this number not only highlights that children are among the most vulnerable groups to climate change, but that they are also the greatest change agents with regard to the long-term protection and stewardship of our planet.¹¹³

In comparison to adults, children are more vulnerable – physically, cognitively and physiologically – to the adverse effects of climate change, reflecting existing social inequalities and the failure to implement individual's basic rights.¹¹⁴ While children share the same rights as adults, the violation of their rights is experienced with greater severity.¹¹⁵ These include injury or death from natural disasters, post-traumatic stress, loss of caregivers, disrupted education, forced and organized displacement, increased risk of contracting climate-sensitive infectious diseases (e.g. malaria, diarrhea), air pollution and heat-related illnesses and fatalities, malnutrition (including vitamin deficiencies resulting from food and water shortages), and waterborne illness.¹¹⁶ The quality of the environment significantly impacts whether a child survives the first year of life, but also affects their mental and physical development.¹¹⁷ In addition, climate change leads older children to face physical, mental, social, and emotional constraints. Children are more vulnerable to natural disasters due to their lack of physical strength. In such situations, children also often remain helpless when orphaned or separated from their families.¹¹⁸ While such consequences are often further exacerbated by various factors, like poverty, studies have found that “many children can be extraordinarily resilient in the face of significant challenges.”¹¹⁹

¹¹² “Climate Change and Children: A Human Security Challenge”, Innocenti Research Centre – UNICEF (2008), access at: http://www.unicef-irc.org/publications/pdf/climate_change.pdf (last accessed: 1 April 2013).

¹¹³ “Climate Change and Children”, UNICEF, (December 2007), access at: http://www.unicef.org/publications/files/Climate_Change_and_Children.pdf (last accessed: 1 April 2013).

¹¹⁴ Kimberly Gable-Payne, Senior Advisor at UNICEF, has noted that, “...children are disproportionately affected by climate change-related impacts. The impacts are a reflection of social inequalities and a failure to implement basic rights of peoples.” “Climate Change and Children: A Human Security Challenge”, Innocenti Research Centre – UNICEF (2008), access at: http://www.unicef-irc.org/publications/pdf/climate_change.pdf (last accessed: 1 April 2013); See also: *Narrowing the gaps to meet the goals a special report on a new study by UNICEF shows that an equity-focused approach to child survival and development is the most practical and cost-effective way of meeting the health Millennium Development Goals for children*. New York, NY: UNICEF (2010), access at: http://www.unicef.org/publications/index_55927.html (Last accessed: 24 June 2013).

¹¹⁵ “A brighter tomorrow: climate change, child rights, and intergenerational justice”, UNICEF (2007), access at: http://www.worldfuturecouncil.org/fileadmin/user_upload/Maja/Future_Justice_Library/UNICEF_intergenerationaljustice_2_.pdf (last accessed: 1 April 2013).

¹¹⁶ Children At Increased Risk From Effects Of Global Climate Change, Report Says, Science Daily, (1 November 2007), access at: <http://www.sciencedaily.com/releases/2007/10/071029121121.htm> (last accessed: 1 April 2013). “Climate Change and Children: A Human Security Challenge”, Innocenti Research Centre – UNICEF (2008), access at: http://www.unicef-irc.org/publications/pdf/climate_change.pdf (last accessed: 1 April 2013).

¹¹⁷ Kempe, R., H. ‘Child survival, poverty, and labor in Africa’, *Journal of Children & Poverty*, 2005, vol. 11, no. 1, pp. 19-42.

¹¹⁸ Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”.

¹¹⁹ Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”; Bartlett, S., ‘Climate Change and Urban Children Impacts and Implications for Adaptation in Low and Middle Income Countries’, IIED Human Settlements Discussion Paper, p. 11. Accessed at: www.iied.org.

Children's human rights – the right to childhood (e.g. the right to play), the right to primary education, the right to protection, and the right to a healthy environment in which to develop and grow – are protected and preserved under the United Nations Convention on the Rights of the Child (CRC)¹²⁰ and 'A World Fit for Children' (WFFC). The WFFC Declaration particularly articulates States' commitments "to give every assistance to protect children and minimize the impact of natural disasters and environmental degradation on them."¹²¹ Meanwhile, the CRC has recognized children's inability to fully enjoy their human rights as a result of climate change.¹²² Climate change has direct implications on children, especially with regard to their right to life and development, (Article 6.2) and the right to a standard of living that is "adequate for the child's physical, mental, spiritual, moral and social development."¹²³

Children's human rights (and intergenerational responsibility) have, however, been largely unaddressed in international and national climate regimes and environmental law.¹²⁴ However, participatory rights for children can help ensure that their concerns and ideas are considered. This encourages decision-making bodies to reflect on the needs of future generations.¹²⁵ This is particularly the case because climate-related decisions that are made today will have significant implications 10 years from now. Current frameworks and protocols should recognize, protect, and empower children.¹²⁶ There is, thus, a strong case for engaging them in decision-making, rather than treating them as passive observers or victims.¹²⁷ Early evidence of children's participation in adaptation programmes shows that a participatory approach may provide benefits, as children can offer insights into local environments because they interact with their environment in a manner that differs from adults (e.g. play).^{128 129}

Children's rights are also among the top priorities of Finland's human rights policy. In promoting the *rights of the child*, Finland supports four cross-cutting principles of the CRC: prohibition of discrimination, consideration of the best interests of the child,

¹²⁰ Adopted by the United Nations General Assembly in 1989 and ratified to date by 193 countries.

¹²¹ See "A World for Children", UNICEF, <http://www.unicef.org/specialsession/wffc/> (last accessed April 1, 2013).

¹²² Limon, Marc (2009). "Human Rights and Climate Change: Constructing a Case for Political Action", 2 *Harvard Environmental Law Review* 33, 470.

¹²³ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 11.

¹²⁴ National Adaptation Programmes of Action (NAPAs), for example, rarely reference the vulnerability of children.

¹²⁵ "A brighter tomorrow: climate change, child rights, and intergenerational justice", UNICEF (2007), access at: http://www.worldfuturecouncil.org/fileadmin/user_upload/Maja/Future_Justice_Library/UNICEF_intergenerationaljustice_2_.pdf (last accessed: 1 April 2013).

¹²⁶ "Climate Change and Children: A Human Security Challenge", Innocenti Research Centre – UNICEF (2008), access at: http://www.unicef-irc.org/publications/pdf/climate_change.pdf (last accessed: April 1, 2013).

¹²⁷ "Our climate, our children, our responsibility: The implications of climate change for the world's children", UNICEF UK Climate Change Report (2008), Access at: <http://www.crin.org/docs/climate-change.pdf> (last accessed: 1 April 2013).

¹²⁸ "Climate Change and the Health of Children", United States Environmental protection Agency, access at: <http://yosemite.epa.gov/oehp/ochpweb.nsf/content/climate.htm#8> (last accessed: April 1, 2013).

¹²⁹ "A brighter tomorrow: climate change, child rights, and intergenerational justice", UNICEF (2007), access at: http://www.worldfuturecouncil.org/fileadmin/user_upload/Maja/Future_Justice_Library/UNICEF_intergenerationaljustice_2_.pdf (last accessed: 1 April 2013).

right to life and development, and right to participate.¹³⁰ In line with the Convention, Finland emphasizes: children's' right to participate; children's' right to seek, obtain, and supply information; the continued appointment of child and adolescent participants to its official delegations;¹³¹ and mainstreaming the rights of the child. Finland's development policy, based on a human rights based approach, also aims to reduce poverty and inequality, as well as integrate participation as a cross-cutting objective in its development cooperation.¹³² Additionally, Finland already promotes children's participatory rights, as required under human rights conventions, to ensure that their education reinforces their individual creativity and social responsibility.¹³³ In line with this, the authors generally encourage Finland to highlight the particular vulnerability to climate change in the following areas:

- **Participation:** Encouraging decision-makers to view themselves as mentors and partners of children in decision-making processes, as well as encouraging programmes that promote children's participation (e.g. via focus groups, community mapping exercises, disaster preparedness plans, and systematic analysis of children's everyday lives) in local environmental initiatives.¹³⁴
- **Processes:** Aligning with existing and emerging mechanisms in the climate change regime and development cooperation¹³⁵ to help strengthen children's roles in local, national and global development processes (e.g. National Implementation Plans of Action, international and national poverty reduction strategies, etc.).¹³⁶ This includes the integration of children in adaptation planning, programmes, and projects at various governance levels. Furthermore, we encourage intersectoral coordination and collaboration across ministries (e.g. education, health, environment).¹³⁷
- **Education:** Ensuring that children are educated on how to deal with the increased risk (e.g. DRR) and uncertainty as a result of climate change.¹³⁸
- **Research:** We encourage further research on the link between climate change and children.

1.3.3.2. Gender & Sexual Minorities

In addition to socio-economic factors, gender and sexual minorities' are especially vulnerable to climate change due to culturally and socially embedded prejudices.¹³⁹ This

¹³⁰ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 26.

¹³¹ Ibid.

¹³² In summer 2013, the European Commission and UNICEF will jointly publish a "Toolkit on children's rights in development cooperation and government programming."

¹³³ As noted in Finland's Human Rights Policy (2009), p 29, this presupposes sufficiently extensive and high-quality human rights teaching in educational institutions.

¹³⁴ "Climate Change and Children", UNICEF, (December 2007), access at: http://www.unicef.org/publications/files/Climate_Change_and_Children.pdf (last accessed: 1 April 2013).

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ "A brighter tomorrow: climate change, child rights, and intergenerational justice", UNICEF (2007), access at: http://www.worldfuturecouncil.org/fileadmin/user_upload/Maja/Future_Justice_Library/UNICEF_intergenerationaljustice_2_.pdf (last accessed: 1 April 2013).

becomes visible in Disaster Risk Reduction (DRR) programs, which are often built around familial structures as a common unit for analyzing and distributing relief services.¹⁴⁰ Non-traditional living situations, combined with increased desperation and competition for resources, may place individuals belonging to gender and sexual minorities in vulnerable positions. Long-term aid relief may often be embedded with prejudice and discrimination (e.g. disaster relief that breaks off ties between individuals and their supportive communities). Consequently, organisations focusing on gender and sexual minorities may serve as de facto families, default social spaces, sources of protection and providers of information their constituents. Gay men, for example were denied food aid after the 2008 earthquake in Haiti because ration schemes were only targeted at women.¹⁴¹ As these men had no women registered in their residences, they were unable to gain access. Furthermore, transgender persons were denied access to Internally Displaced Persons camps after the floods in Pakistan because they did not possess government ID matching their appearance.¹⁴² Lastly, in the aftermath of the 2004 tsunami in Tamil Nadu, aravanis faced discrimination in access to housing, medical care, and toilets.

As a part of its human rights policy, Finland emphasizes the rights of *individuals belonging to gender or sexual minorities* in:¹⁴³ requiring that human rights are equally applied to all persons regardless of sexual orientation or gender identity; in development cooperation, Finland supports gender and sexual minorities' support networks and organisations that defend their rights. In line with this and in drawing attention to human rights violations experienced by gender and sexual minorities in the context of climate change in international processes, this report encourages the Finnish Foreign Ministry to:

¹³⁹ For a more general understanding of Finland's stance toward gender and sexual minorities, see "Brochure: Freedom to Choose - Sexual and Reproductive Health and Rights in Finland's Development Policy", Finnish Foreign Ministry (2010), access at: <http://formin.finland.fi/public/default.aspx?contentid=193411> (last accessed: 2 April 2013).

¹⁴⁰ Documents produced by the Inter-Agency Standing Committee (IASC) do not mention the needs of gender and sexual minorities. Similarly, the protocols of UNAIDS and the Joint UN Program on HIV/ AIDS do not acknowledge the needs of this vulnerable group. Although, the International Federation of Red Cross and Red Crescent Societies (IFRC) has produced some research on the inclusion of gender and sexual minorities, its protocols relating to shelter protocols do not provide instructions on how to categorise or care for people outside the male–female binary. Runeborg, Anna, "*Sexuality: A Missing Dimension in Development*", Sida, (May 2008), access at: <http://www.sida.se/Svenska/Om-oss/Publikationsdatabas/Publikationer/2008/maj/Sexuality-A-Missing-Dimension-in-Development/> (last accessed: 1 April 2013); see also, Cianfarani, Marcilyn, "Integrating Diversity into Disaster Risk Reduction (DRR): A Literature Review", *International Association of Emergency Managers Bulletin*, (March 2012); Knight, Kyle, and Richard Sollom, "Making disaster risk reduction and relief programmes LGBTinclusive: examples from Nepal", *Humanitarian Practice Network* 55 (September 2012), access at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-55/making-disaster-risk-reduction-and-relief-programmes-lgbtiinclusive-examples-from-nepal> (last accessed: 1 April 2013).

¹⁴¹ Knight, Kyle, and Richard Sollom, "Making disaster risk reduction and relief programmes LGBTinclusive: examples from Nepal", *Humanitarian Practice Network* 55 (September 2012), access at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-55/making-disaster-risk-reduction-and-relief-programmes-lgbtiinclusive-examples-from-nepal> (last accessed: 1 April 2013).

¹⁴² Ibid.

¹⁴³ In promoting the *rights of gender and sexual minorities*, Finland has signed the United Nations Declaration on Sexual Orientation and Gender, which aims to decriminalise homosexuality, which remains a criminal offence in over 80 countries.¹⁴³ Efforts to prevent discrimination based on multiple grounds will be undertaken at various governance levels – through work with and in support of the Council of Europe's Commissioner for Human Rights, the Organization for Security and Co-operation in Europe, and the UN Human Rights Council.

- **Definition:** Consider how the definition of “family” or “household” affects same-sex couples, individuals not living in traditional family units. Consider how government-issued identification documents are used to validate citizens or grant access to assistance.
- **Research:** Consider undertaking research regarding the effects of climate change on gender and sexual minorities.
- **Data:** Ensure that data regarding climate change (indicators, targets, and reports associated with Sustainable Development Goals) can be disaggregated in relation to gender and sexual minority. Such data can also assist in understanding local political landscapes.
- **Processes:** Promote the inclusion of gender and sexual minorities in upcoming UNFCCC Work Plans, as well as in adaptation, mitigation, and financing measures.
- **Resources:** Ensuring sufficient funding and support mechanisms for gender and sexual minorities, as well as their respective organizations.
- **Capacity Building:** Promote outreach and training programmes as part of DRR.
- **Participation:** Promote the inclusion and participation of gender and sexual minorities in civil society organisations and networks for gender and sexual minorities contributing to negotiation and review processes, especially those pertaining to the climate change regime and development cooperation.

1.3.3.3. Disabled Persons

While much has been written on the effects of climate change on marginalized groups, little attention has been given to the vulnerability of disabled persons. Approximately 680 million persons suffer from physical or mental disabilities. Despite human rights’ universal applicability, disabled persons are often denied the enjoyment of all rights due their insufficient implementation. For instance, reports like the IPCC and the Human Development Report (2007-2008) did not identify disabled persons as requiring particular attention or inclusion in climate change adaptation measures.¹⁴⁴ However, vulnerability to climate change often also has a dimension of poverty and disability. According to the World Report on Disability, over 20% of the world’s poorest people are disabled,¹⁴⁵ and by 2050, an estimated 18 million disabled persons will be displaced by climatic

¹⁴⁴ Wolbring, G 2009, ‘A Culture of Neglect: Climate Discourse and Disabled People’, *M/C Journal*, 12(4), <http://www.journal.media-culture.org.au/index.php/mcjournal/article/viewArticle/173/index.html>, (last accessed: April 1, 2013). Further information on disabled persons and climate change may be found here: <http://journal.media-culture.org.au/index.php/mcjournal/article/viewArticle/173> (last accessed: April 1, 2013); The Global Partnership for Disability & Development (GPDD) and The World Bank (Human Development Network - Social Protection/Disability & Development Team, “The Impact of Climate Change on People with Disabilities” (8 July 2009), access at: [http://www.ucl.ac.uk/lc-ccr/centrepublishations/staffpublications/Impact of Climate Change on Disability-Report-2010.pdf](http://www.ucl.ac.uk/lc-ccr/centrepublishations/staffpublications/Impact%20of%20Climate%20Change%20on%20Disability-Report-2010.pdf) (last accessed: 1 April 2013).

¹⁴⁵ UN World Health Organization, *World Report on Disability: Summary*, 2011, WHO/NMH/VIP/11.01, access at: <http://www.unhcr.org/refworld/docid/50854a322.html> (last accessed 1 April 2013); Of these 20%, 82% of persons with disabilities in developing countries live below the poverty line. See, Elwan, A 1999, ‘Poverty and Disability; a survey of the literature’, The World Bank, Social Protection Discussion Paper Series (1999): 9932.

events.¹⁴⁶ With respect to disabled persons, climate change has the following implications: decreasing food security and resulting malnutrition; decreasing access to clean water, sanitation and hygiene; increasing emergencies due to extreme weather events; reducing access to infrastructure, shelter and basic services; increasing displacement/migration alternatively, the inability of disabled persons to partake in necessary migration increasing human security and protection issues (incl. conflicts resulting from climate change). Both direct (e.g. negative attitudes, prejudice, or legislative discrimination) and indirect discrimination (e.g. physical barriers, such as stairs, to vital locations; the use of media for visually impaired persons), banned by international legal instruments, inhibit disabled persons from effectively participating in all forms of decision-making. This includes decision-making with regard to climate change.

The International Disability and Development Consortium, a group of international disability organizations from twenty countries highlights that the consideration of disabled persons is not only crucial but also a human right – from making cyclone shelters physically accessible and providing accessible warning systems to ensuring that policies and attitudes do not exclude disabled persons. In a statement to the Human Rights Council Resolution 7/23 "Human Rights and Climate Change" in December 2008, IDDC's Task Group on Conflict and Emergencies made a case to UNOHCHR for a new human rights based approach to tackling climate change, focusing on disabled persons' human rights. However, on a global level, disabled persons remain among the most vulnerable to have their human rights "abused, challenged, unrealized, or violated."¹⁴⁷

The UN Convention on Rights of Persons with Disabilities (UNCRPD), the most recent UN human rights treaty¹⁴⁸, "seeks to redress systemic human rights violations and social exclusion that are commonly encountered by persons with disabilities."¹⁴⁹ It explicitly protects disabled persons in situations of risk, including humanitarian emergencies and natural disasters (Art 11) and stresses the role of international cooperation (Art. 32), as well as inclusive international development programs, in including disabled persons.¹⁵⁰ However, climate change itself is not included and little systematic research analysing its effects has taken place.

Finland's human rights policies with regard to disabled persons were designed in line with the UNCRPD. In promoting the **rights of persons with disabilities** and ensuring their participation in political decision-making,¹⁵¹ as well as guaranteeing the equality of

¹⁴⁶ International Organisation for Migration, "Migration, climate change and environmental degradation: a complex nexus", access at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/env_degradation/compendium_climate_change.pdf (last accessed: 1 April 2013).

¹⁴⁷ International Disability and Development Consortium. (2008). A Statement to the Human Rights Council Resolution 7/23 "Human Rights and Climate Change. *Office of the High Commissioner on human rights*.

¹⁴⁸ Entered into force in May 2008.

¹⁴⁹ International Disability and Development Consortium. (2008). A Statement to the Human Rights Council Resolution 7/23 "Human Rights and Climate Change. *Office of the High Commissioner on human rights*.

¹⁵⁰ International Disability and Development Consortium. (2008). A Statement to the Human Rights Council Resolution 7/23 "Human Rights and Climate Change. *Office of the High Commissioner on human rights*; see also, Ansell, Kate, "Where disability meets climate change", BBC (5 December 2009). Access at: http://www.bbc.co.uk/ouch/features/where_disability_meets_climate_change.shtml (last accessed: 1 April 2013)

¹⁵¹ Finland was actively involved in negotiations related to the Convention on the Rights of Persons with Disabilities (eg in supporting the work of the special rapporteur, appointed by the UN Secretary-General),

persons with disabilities and the prohibition of their discrimination,¹⁵² Finland's human rights policy emphasizes, among others:

- participatory decision-making under its development cooperation (e.g. the rights and equalisation of opportunities as an inherent component of a rights-based approach and cross-cutting theme);¹⁵³
- strengthening the implementation of their rights in Finland's development policy and cooperation;¹⁵⁴
- a multi-dimensional approach in mainstreaming the rights of disabled persons into various activities and sectors, including Finland's foreign relations;
- the inclusion of their rights in national and international programmes and strategies;
- ensuring that all programmes impacting social and human development issues (especially those aiming to reform public services, infrastructure, and governance) are, to some extent, disability-relevant.¹⁵⁵

In line with this, the authors encourage Finland to:¹⁵⁶

- **Research:** Consider undertaking research on the effects of climate change on disabled persons.
- **Data:** Ensure that data (e.g. indicators, targets, and reports associated with Sustainable Development Goals) regarding climate change can be disaggregated in relation to disability.
- **Participation:** Promote the inclusion of persons with disabilities in civil society organizations contributing to various negotiation and review processes, especially those pertaining to the climate change regime and development cooperation.
- **Processes:** Ensure the recognition and implementation of UNCRPD, specifically Articles 11 and 32, in facilitating better links between climate change adaptation and mitigation policies and disabled persons.
- **Resources:** Ensure sufficient funding and support mechanisms for disabled persons and their respective organizations.

which came into effect in 2008. In Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 10; Finland continues its support of the Convention in contexts like the Universal Period Reviews at the UN Human Rights Council. In Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 30.

¹⁵² Ibid.

¹⁵³ Ibid 31.

¹⁵⁴ Ibid 30.

¹⁵⁵ "Mainstreaming the Disability Dimension in Development Cooperation: Case Finland – Lessons Learned", National Institute for Health and Welfare (2012), access at: <http://www.thl.fi/thl-client/pdfs/a74a4465-86b2-4968-ab62-983bb8ccf3b2> (last accessed: 2 April 2013).

¹⁵⁶ International Disability and Development Consortium. (2008). A Statement to the Human Rights Council Resolution 7/23 "Human Rights and Climate Change. Office of the High Commissioner on human rights; see also, International Disability and Development Consortium, "Disability and Sustainable Development", access at: http://www.iddconsortium.net/joomla/images/IDDCdocuments/2012_iddc_sustainable_policy_brief_rio.pdf (last accessed: 1 April 2013).

1.4. Methodology & Aim

This paper is the result of a nine-month long research project commissioned by the Ministry for Foreign Affairs of Finland (MFA), and carried out with the Northern Institute for Environmental and Minority Law at the Arctic Centre, University of Lapland. The aim of the brief was to map short- and medium-term entry points for Finnish foreign policy to help address the vulnerability of already marginalized groups, including women and indigenous peoples, to climate change.

In his preliminary report, John Knox identified issues that must be addressed when moving ahead on issues like climate change. These include: the role of non-state actors, including multinational corporations and vulnerable groups (e.g. indigenous peoples).¹⁵⁷ He also identified rights to freedom of expression and association, rights to receive information and participate in decision-making processes, and rights to legal remedies as crucial in environmental policy-making, stating that “[t]he exercise of these rights makes environmental policies more transparent, better informed and more responsive to those most concerned.”¹⁵⁸

Complex human-environment systems, an essential facet of climate change, necessitate a reconsideration of current environmental governance, both globally and locally.¹⁵⁹ Assessing linkages between climate change, environmental degradation, and human rights in various arenas – from international law to economics – becomes particularly challenging with regard to states’ responsibility to respond to human rights violations resulting from climate change.¹⁶⁰ To date, states have developed various policy responses (and approaches) in coping with such diverse environmental problems – ranging from biodiversity loss to climate change – but little attention has been given to the nexus between climate change, development cooperation, and human rights.¹⁶¹

While, climate change is often addressed via a sectoral (and a traditionally economic) cost-benefit approach (e.g. taxation, trade policies, etc.), it often inadequately addresses broader social impacts and opportunities that could be seized if policies comprehensively incorporated social dimensions of climate change, alongside economic and scientific environmental components.¹⁶² There is a need for new approaches and tools that lead to more inclusive development processes provide access to information, inclusive decision-making, as well as systems of support and redress for those most impacted by climate change.¹⁶³ Furthermore, these measures must be integrated into top-down and bottom-up approaches that are sufficient and sustained, as opposed to “reactive” for short-

¹⁵⁷ "Environment and human rights: the link is there, and so is the States' obligation to protect them – UN expert." *Office of the High Commissioner for Human Rights / OHCHR Welcome page*. N.p., n.d. Web. 18 July 2013. Access at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13089&LangID=E>.

¹⁵⁸ Ibid.

¹⁵⁹ Andonova, Liliana B. and Mitchell, Ronald. (2010) The Rescaling of Global Environmental Politics (November 2010). *Annual Review of Environment and Resources* 35, 256.

¹⁶⁰ Limon, Marc. (2009). "Human Rights and Climate Change: Constructing a Case for Political Action", 2 *Harvard Environmental Law Review* 33, 445.

¹⁶¹ Ostrom, Elinor, and Michael Cox. (2010). "Moving beyond panaceas: a multi-tiered diagnostic approach for social-ecological analysis." *Environmental Conservation* 37, 452.

¹⁶² World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 29.

¹⁶³ Cameron, Edward. (2011). *Development, climate change and human rights. From margins to the mainstream*. Social Development Papers, Paper no 123. World Bank: Social Development.

term disaster relief.¹⁶⁴ Rescaling across issue areas and integrating an understanding of climate change implications – legal, relevant, and actionable – allows for the coupling of concerns.¹⁶⁵ This includes integrating social dimensions – from the marginalization of women to the plight of indigenous peoples – into new and existing climate change policy architecture. It also provides an opportunity for existing institutions to re-examine their policy processes, such as efforts by the World Bank to include FPIC.¹⁶⁶ We adopt this lens in examining two regimes: the climate change regime, with a special focus on the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD)¹⁶⁷, and development cooperation.

The concept of vulnerability goes beyond the biophysical aspect of climate change and provides a policy-relevant framework within which to examine the capacity or resilience of socio-ecological systems or peoples to cope, adapt to, or recover from stress.¹⁶⁸ Understanding the conditions that make individuals vulnerable in the first place is, thus, an important aspect of projecting and responding to the consequences of climate change.¹⁶⁹ Gaps in current human rights and climate change frameworks highlight the potential for these frameworks to be mutually reinforcing. However, choices influence the pace of climate change and the extent to which resilience is built. Integrating social dimensions, such as human rights, into climate change policy architecture is important in responding to vulnerability and influencing how social groups gain access to and utilize various resources.¹⁷⁰ Men, women, indigenous, peoples, children, gender and sexual minorities, and disabled persons face social, economic and environmental realities in different ways; how they participate is also different and is closely related to various socio-economic factors. While there is a notion that such vulnerable groups should be included merely because they are marginalized, they should, instead, be included because they can contribute different perspectives and experiences.¹⁷¹ Including them in policy-making may enhance the value of local innovation and context-specific knowledge that can help address existing obstacles.¹⁷² International cooperation and social mobilization are critical in providing such marginalized groups with the necessary tools – economic, scientific, and technical – to design and implement inclusive strategic plans, as well as mitigation and adaptation policies, that can help prevent climate vulnerability. This includes globally

¹⁶⁴ *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 6.

¹⁶⁵ In Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press, 301.

¹⁶⁶ Andonova, Liliana B. and Mitchell, Ronald. (2010) The Rescaling of Global Environmental Politics (November 2010). *Annual Review of Environment and Resources* 35, 272.

¹⁶⁷ REDD is a mechanism designed to use financial mechanisms to incentivize developing states to reduce GHG emissions from deforestation and forest degradation. For more information and frequently asked questions regarding REDD, access at: <http://www.un-redd.org/FAQs/tabid/586/Default.aspx> (last accessed: 24 June 2013).

¹⁶⁸ Kelly, P.M. and Adger, W.N. (2000) Theory and practice in assessing vulnerability to climate change and facilitating adaptation, 4 *Climatic Change* 47, 329 and 347.

¹⁶⁹ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 22.

¹⁷⁰ Caesens, Elisabeth, and Maritere Rodr guez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 25.

¹⁷¹ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 26-27.

¹⁷² UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 14.

negotiated and locally implemented climate change policy, from climate financing to development cooperation.¹⁷³ Furthermore, due to the inequalities faced by many women and indigenous peoples, focusing them can and often will lead to major results.¹⁷⁴

While this report adheres to academic standards in relation to consistency and the accuracy of references, it needs to be underscored that it also aims to address certain “pragmatic” needs. Separate institutional frameworks for human rights and the environment often mean that governance is competitive, rather than coordinated. Both are faced with challenges in aiming to achieve greater cooperation and coordination across sectors. This is, in part, because existing institutions – at the national and global level – were provided with mandates that do not address both issues and have, to put it simply, *not* envisioned solutions for such complex issues. Changing such institutional frameworks, processes, and patterns is difficult. Consequently, it takes determined countries, such as Finland, to help provide opportunities for institutional and governance innovation. There is a need for comprehensive global agreements that address such matters in a holistic and coordinated manner (e.g. among various treaty bodies and agencies) and, thereby, help guarantee the success of integrative laws and policies. Numerous examples of state and international practices linking the environment and human rights – such as bringing human rights concerns into environmental impact assessment mechanisms, both nationally and internationally, or including environmental sustainability into humanitarian fieldwork – may serve as prototypes for effectively promoting vulnerable groups through Finnish foreign policy.¹⁷⁵

Human rights standards, principles, and objectives should both strengthen – promote policy coherence and viable outcomes – and inform policy-making regarding the environment and development policies. Assessing the effects of such policies and measures with regard to human rights, as well as considering vulnerability and adaptive capacity in terms of human rights highlights “the importance of analysing power relationships, addressing underlying causes of inequality and discrimination, and gives particular attention to marginalized members of society.”¹⁷⁶ It should strengthen the participation of both individuals and groups in decision-making processes and ensure all persons access to basic levels of economic, social, and cultural rights. Furthermore,

¹⁷³ It is also important to note links between the national and international, where Ministries of Foreign Affairs may successfully create institutions and programs that can help support such groups in a more comprehensive manners. This is particularly evident in the Nordic countries, including Finland, where the MFA is alone in promoting minority issues in Finland. In MRG Conference; World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 23.

¹⁷⁴ Focusing on minority groups is also effective when Foreign Ministries and UN mechanisms may find themselves with less resources than expected. As noted at the Education Conference on “Minorities and indigenous peoples’ rights in foreign policy and development cooperation” hosted by the Ministry of Foreign Affairs Human Rights Policy (POL-40) at Scandic Marina Congress Centre, Helsinki, Thursday, 16 May, 2013.

¹⁷⁵ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 30-31.

¹⁷⁶ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 34.

accountability in implementing policies regarding climate change requires both access to administrative and judicial remedies, as noted above.

In mapping out entry points for Finnish foreign policy to address the climate vulnerability of indigenous peoples and women, focusing on the role of participatory rights where environmental governance has been inadequate in empowering and systematically including marginalized groups, this report aims to answer the following questions:

Questions

What are the main challenges in linking climate change to human rights?

What is already doing to tackle human rights and climate change? How successful has it been? Furthermore, what are the main challenges in integrating vulnerable peoples, such as indigenous peoples and women, into existing processes?

How can we meet these challenges and overcome resistance?

How can states engage existing international actors in a manner that is predicated on human rights in environmental policy-making, which largely operates outside traditional international human rights processes? What role can participatory rights play? What can climate change, development cooperation and REDD do to adequately address human rights harms resulting from climate change? What are the main challenges in integrating gender and indigenous peoples into the issue? How can we meet these challenges? Confront these obstacles? Overcome this resistance?

What are the next steps?

Which entry points – in the climate change regime, development cooperation, and REDD – should Finland focus its foreign policy on the short- and mid-term?

Seeking to explore these questions, this report will examine how an emphasis on participatory rights, and human rights more broadly, in environmental decision-making is reflected in existing climate change, development cooperation, and REDD policies and processes.¹⁷⁷ In responding to these questions, the authors have undertaken this research in two steps: 1) via a comprehensive desk study; and 2) through stakeholder consultations, including academic researchers, non-governmental organizations, indigenous peoples organizations and representatives, as well as representatives of international organizations.

Although the aim of the research is too pragmatic to enable rigorous academic research, one has to recognise the limits of pragmatic research. This research cannot assume the role of a ‘handbook’ for the realization of the human rights-based approach in environmental governance or provide a full analysis of individual institutions’ impact on marginalized groups’ vulnerability, in the context of climate change. This issue would require a far more extensive study than the present one. However, the authors hope to broaden both the MFA’s and other actors’ understanding of the opportunities for strengthening the role of women and indigenous peoples across three continually-evolving international regimes.

¹⁷⁷ Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) "Climate Change and Human Rights" in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 290.

Chapter 2. Theoretical Background

2.1. Climate Change and Human Rights

"For a long time there has been a lot of discussion and debate over the relationship between human rights law and the environmental harm. It's clear now that, in many ways, the environment can affect our enjoyment of human rights...It's important to protect the environment in order to be able to safeguard other human rights."

– John Knox

2.1.1. General Overview

The multifaceted nature of climate change and its implications challenge traditional state governance and the international community of states as a whole. It especially reveals the inherent limitations and gaps in current governance structures and international law in coping with environmental issues, particularly when factoring in existing human rights discourse. While this is relevant in theory, the human component has largely been weak or missing in climate change policy and the debate on how states can apply human rights norms in mitigation and adaptation to climate change remains largely unanswered.¹⁷⁸ Marginalized populations that are already vulnerable are particularly affected by ongoing negative climate change implications and will continue to be disproportionately affected unless existing measures are altered. This, in itself, leads us to question whether climate change – its objectives, actors, and climate change-related vulnerabilities – is or should be merely regarded as an environmental issue.

As noted, the effects of climate change on human rights (especially vulnerable people), capture a central challenge of our time providing climate change with a human face. Finland has recognized this in noting that, “defining the concrete implications of the responsibility of states based on international human rights treaties in matters of climate change is such a complex issue that it makes further examination on the national level necessary.”¹⁷⁹ An appropriate starting point in conceptualizing the link between climate change and human rights are, thus, the plethora of rights – political, economic, social, and cultural – that will be directly and indirectly impacted by climate change,¹⁸⁰ as well as amplified by various socio-economic factors. The implications of climate change have,

¹⁷⁸ Knox, John H. (2009) Linking Human Rights and Climate Change at the United Nations. *Harvard Environmental Law Review* 33, 492.

¹⁷⁹ The Government of Finland. "Replies to the Questionnaire to Member State prepared by the Office of the High Commissioner for Human Rights, pursuant to Human Rights Council resolution 7/23 on human rights and climate change", access at: <http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Finland.pdf> (last accessed: 17 July 2013).

¹⁸⁰ Climate change has a range of implications, both direct and indirect, for the effective enjoyment of human rights including, *inter alia*, the right to life the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation. In McNerney-Lankford, Siobh n. (2009) “Climate Change and Human Rights: An Introduction to The Legal Issues”, 33 *HARVARD ENV. L.REV.*, 436; Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”, 8; World Health Organization. (2011) The Social Dimensions of Climate Change (Discussion Draft), 24; Human Rights Council, Tenth Session, Resolution 10/4 on Human Rights and Climate Change, access at: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf.

thus, led to a reconsideration of what constitutes both global and local threats. Today, peace and security, economic and social development, environmental protection, democracy and human rights are increasingly interdependent. The negative consequences of climate change have, for example, threatened the right to life, adequate housing, and self-determination, forcing inhabitants of the Arctic (including indigenous peoples), as well as low-lying island states to relocate. In such situations, environmental governance can help protect and rehabilitate individuals whose human rights are not upheld.¹⁸¹ These require novel strategies that not only link multiple levels of governance and actors in developing appropriate policies, but also examine human rights in an environmental context.

Two cases – the Inuit Petition and the Malé Declaration – particularly highlight the challenges described. For example, although the Inter-American Commission did not proceed with the case, the Inuit Petition not only illuminated the link between climate change and human rights, but challenged existing human rights bodies, while also broadening the climate change debate. The Malé Declaration, on the other hand, was the first international declaration to state that climate change has immediate implications for the full enjoyment of human rights. Such cases are likely to surface more frequently, especially as the implications of climate change on already marginalized populations increase. Moreover, the current petition to the Inter-American Commission on Human Rights by the Arctic Athabaskan Council targets Canada, aiming to improve the regulation of black carbon emissions by the federal and provincial governments.¹⁸² The Inter-American Commission has been approached, in part, because it has “successfully [handled] cases put forward by Indigenous peoples” and is “one of the few vehicles we have, or that anyone has, to hold accountable our national [read Canadian] government for its inaction on climate change mitigation.”¹⁸³

¹⁸¹ Limon, Marc (2009). “Human Rights and Climate Change: Constructing a Case for Political Action”, 2 *Harvard Environmental Law Review* 33, 467.

¹⁸² Stakeholder consultation with Terry Fenge. Interview with the authors.

¹⁸³ Ibid.

The Inuit Petition

Climate change and human rights were explicitly linked in 2005, when Inuit from both Canada and the United States, under the auspices of the president of the Inuit Circumpolar Council, Sheila Watt-Cloutier, filed a petition against the United States with the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS). The 167-page petition carefully detailed the human rights violations – ranging from rights to the benefits of culture to the right to life – attributable to the United States, who was the world’s worst emitter of greenhouse gases at the time. Consequences resulting from actions and omissions by one state (the United States), rather than its direct interference on indigenous peoples’ lands, had adverse implications on an already marginalized group (the Inuit). In asserting that GHG emissions directly correlated with the destruction of the Inuit’s environment and culture, the petition primarily aimed at challenging human rights bodies to regard existing human rights instruments from a different angle. It also encouraged them to approach human rights bodies in resolving issues for which they were originally not intended for – in handling the complexity of climate change and its various impacts. The Inuit Petition particularly illuminated the link between climate change and human rights. Aiming to influence international decision-making on climate change with an eye toward decision-makers and the general public, it broadened the climate change debate and focused on the notion of who is participating and should be entitled to participate in the development and implementation of climate change policy. Unfortunately, in the end, the Commission did not proceed with the case.

The Malé Declaration

The Maldives, a small island developing state, drew attention to the human dimension of climate change when it adopted the Malé Declaration on the Human Dimension of Climate Change in 2007. Its inhabitants, threatened by the rising sea level, took a less confrontational approach than the Inuit by influencing the negotiation of a novel climate declaration, as opposed to pursuing a quasi-judicial remedy against a single state. The Malé Declaration on the Human Dimension of Global Climate Change is the first international agreement to explicitly state that, “climate change has clear and immediate implications for the full enjoyment of human rights.” Taken to the Thirteenth Conference of Parties to the United Nations Framework Convention on Climate Change in Bali, it was presented to the assembled world governments. In 2008, the Maldives alongside 80 co-sponsors secured the adoption of UN Human Rights Council’s Resolution 7/23 on “Human Rights and Climate Change”, which confirmed that global warming affected the full enjoyment of human rights.

While socio- economic contexts cannot be altered overnight, targeted state action via existing institutions can help realize these human rights. Various measures, including non-discriminatory ones, should take effect immediately with the aim of preventing the retrogression of existing levels of human rights protection.¹⁸⁴ For example, the empowerment of local participants in decision-making related to climate change serves as

¹⁸⁴ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 6.

a precursor to good climate change policy and prevents the reinforcement of existing power imbalances. It requires enhancing right-holders' capacity to claim and exercise their rights and developing programmes to improve marginalized groups' organizational capacity and technical skills so that they can participate at all stages and multiple levels of policy-making.¹⁸⁵

2.1.2. The Climate Change, Development Cooperation, and Human Rights Nexus

With only a rudimentary understanding of how these complex ecological systems function, there is solid reasoning in advocating for an interdisciplinary understanding of current and future challenges, including the effects of climate change on individuals' human rights. It is difficult to predict sharp shifts in the behaviour of such complex systems, let alone disentangle the complex causal relationships linking emissions of a particular country to specific effects – from sudden algal blooms, forest blights, and extreme climate events.¹⁸⁶ In addition, disentangling policies, while simultaneously de-fragmenting international law, becomes a challenge in itself. Temporal and spatial scales, logic, language and priorities of development, climate change action and human rights promotion often diverge. This is partly due to the fact that policies are located in separate governmental departments, often leading to trade-offs between development and climate priorities.¹⁸⁷ In this regard, Edward Cameron has noted that:

*These approaches are being pursued at a time of general convergence of concepts in looking at human development, climate change and human rights. There is a growing understanding of how these three fields, and the various conceptual, political and legal frameworks that accompany them, intersect. While some organizations cannot explicitly adopt a human rights-based approach to climate change, they can – and are – enhancing choices, opportunities and capacities of vulnerable populations. This is being done by creating a new vision of climate change that looks at social as well as environmental factors.*¹⁸⁸

The link between development and human rights, climate change and human rights, as well as development and climate change, have been a focus of scholars, policy-makers, and practitioners for some time. The nexus has proven to be a powerful tool of public diplomacy.¹⁸⁹ This is, in part, due to its multifaceted nature, which means that various policies – from foreign policy, energy policy to agricultural policy – become intricately linked.¹⁹⁰ Furthermore, these policies become closely tied to the well being of

¹⁸⁵ World Health Organization. (2011) The Social Dimensions of Climate Change (Discussion Draft), 31-32.

¹⁸⁶ Dixon, Thomas F. (2000) *The ingenuity gap*. New York: Knopf, 69; Knox, John H. (2009) Linking Human Rights and Climate Change at the United Nations. *Harvard Environmental Law Review* 33, 488.

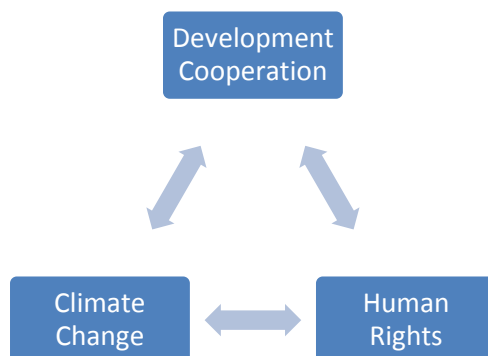
¹⁸⁷ OECD. (2005) Bridge over troubled waters: Linking Climate Change and Development; Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development.

¹⁸⁸ Cameron, Edward. (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development.

¹⁸⁹ Cameron, Edward. (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development.

¹⁹⁰ World Health Organization. (2011) The Social Dimensions of Climate Change (Discussion Draft), 29.

social groups and, thereby, often challenge policy-making further by forcing trade-offs in public policy.¹⁹¹ What has emerged is a Gordian Knot, producing numerous challenges and contradictions leading responsible and conscious policy-making to become a complex exercise.



Ultimately, equity of outcome and legitimacy in decision-making are central components that determine the perceived success and relationships within, as well as between systems.¹⁹² Thus, in order to appropriately consider the interplay between human rights, climate change, and development, and maintain appropriate coherence between them in policy-making, a normative premise must be articulated with an eye toward priorities, process, and practical implications.¹⁹³ This must recognize that climate change policy includes multiple sectors and actors, and is inherently connected to development cooperation. For example, shifting government expenditures to climate change response measures may negatively impact other policies, such as poverty eradication.¹⁹⁴ There is, thus, a need for an integrated approach that enables countries, like Finland, to mobilize diverse financing and policy options for climate resilient development.¹⁹⁵ One means of avoiding such a Gordian Knot may be by focusing aid and climate efforts on marginalized and vulnerable (both in the context of development cooperation and climate change) groups, including indigenous peoples and women.

¹⁹¹ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 14.

¹⁹² Adger, W.N. Arnell, N.W. and Tompkins, E. (2005) Successful adaptation to climate change across scales, *Global Environmental Change*, 15, 2, 83.

¹⁹³ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 55.

¹⁹⁴ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 13.

¹⁹⁵ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 11.

2.2. The Environment & Human Rights

This leads to discussions surrounding the qualification of the environment.¹⁹⁶ The environment is an open and multi-layered concept, both legally and politically. The Aarhus Convention, for example, contains no definition for environment, which may be a direct reflection of the open-ended nature of the term.¹⁹⁷ Moreover, the desired quality of the environment is a value subjectively judged and difficult to codify into legal language.¹⁹⁸ Nevertheless, environmental human rights use global norms for human rights in an attempt to state a universal standard of minimum environmental protection.

There are two alternative approaches to the relationship between international human rights and environmental protection. According to the first view, the recognition of environmental rights is a necessary prerequisite for the ultimate realization of fundamental human rights. This view perhaps comes closest to the ideas presented in the Stockholm Declaration in 1972. Environmental protection is, thus, an essential instrument in the efforts to secure effective universal enjoyment of internationally guaranteed human rights.¹⁹⁹ International human rights may also be considered as “a launching point from which environmental rights may be derived”.²⁰⁰ This approach, most common in international environmental agreements established since 1992, is also instrumentalist but instead of viewing environmental protection as an essential element of human rights, it considers certain human rights essential elements to achieving environmental protection. These procedural rights, contained in almost all human rights instruments, are thus adopted in international environmental instruments in order to have better environmental decision-making and enforcement.²⁰¹ It has been contended that both conceptually and practically, the intersection of the two disciplines, human rights and environmental protection, is more potent than either discipline working in isolation.²⁰² “With the creation of the right to a decent environment, existing human rights would gain a new dimension.”²⁰³ With regard

¹⁹⁶ For a more in-depth discussion on the qualification of the environment, see: Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 15-16.

¹⁹⁷ On the other hand, the objectives of the Aarhus Convention differ considerably from traditional international environmental treaties.

¹⁹⁸ Anderson, Michael R. *Human Rights Approaches to Environmental Protection: An Overview*, in Boyle, Alan – Anderson, Michael R. (eds.), *Human Rights Approaches to Environmental Protection*, (1998), 10.

¹⁹⁹ Shelton continues by stating that every intergovernmental human rights body, regional and global, has concluded that internationally guaranteed rights might be violated by environmental degradation. In Shelton, Dinah. *Remark at the Hearing before the Inter-American Commission on Human Rights on the Effects of Environmental Degradation on the Exercise and Enjoyment of Human Rights in the Hemisphere* (2002), available at: <http://www.cedha.org.ar/docs/doc100-eng.htm> (last accessed: 10 June 2004).

²⁰⁰ Acevedo, Mariana T., *The Intersection of Human Rights and Environmental Protection in the European Court of Human Rights*, 8 New York University Environmental Law Journal (2000), 452.

²⁰¹ Shelton, Dinah. *Human Rights, Health & Environmental Protection: Linkages in Law & Practice*, A Background Paper for the World Health organization (2002), access at: <http://www.who.int/hhr/information/en/Series%20Human%20Rights%20Health%20Environmental%20Protection%20Shelton.pdf>

²⁰² Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 19.

²⁰³ Draft Principles On Human Rights And The Environment, E/CN.4/Sub.2/1994/9, Annex I (1994), para 5. Access at: <http://www1.umn.edu/humanrts/instatee/1994-dec.htm> (last accessed: 23 June 2013).

to human rights and environmental protection – both multi-dimensional and reciprocal – the following legislation and jurisprudence have generally been accepted:

- The failure to respect both internationally- and domestically-guaranteed human rights – including the participation of individuals and groups in decision-making– may lead to environmental destruction or the displacement of local communities that may particularly impact already marginalized groups, such as indigenous peoples and women.
- The failure to conserve natural resources and biodiversity may undermine human rights (e.g. the destruction of ecosystem services that indigenous and local communities depend upon).

2.2.1. International

The impact of environmental sustainability on the enjoyment of human rights has held a strong presence in discussions surrounding environmental protection since the late 1960s. It featured prominently at the 1972 United Nations Conference on the Human Environment, the 1992 Rio Earth Summit, and the 2002 World Summit on Sustainable Development, as well as in international courts, such as the International Court of Justice.

Stockholm Declaration

In preparing for the 1972 Stockholm Conference, the 45th session of the Economic and Social Council stated that the conference was to focus on, “the condition of man, his physical and mental well-being, his dignity and his enjoyment of basic human rights in developing as well as developed countries.”²⁰⁴ The Stockholm Conference itself developed 25 guiding principles for both preserving and enhancing the human environment. Principle 1, in particular, underlined that, “[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”²⁰⁵ Moreover, it was at Stockholm where both environmental scholars and activists began to consider human rights in a more instrumental manner, as a prerequisite for environmental protection. This also included a focus on “procedural rights of access to environmental information, public participation in decision-making, and access to justice and remedies in the event of environmental harm.”²⁰⁶

World Commission on Environment and Development

The World Commission on Environment and Development, more commonly known as the Brundtland Commission, was created as an independent body (outside the UN) by the General Assembly in 1983. Its mandate, focusing on the critical relationship between

²⁰⁴ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

environmental protection and economic development, aimed to formulate realistic proposals for reconciling the two by proposing new forms of international cooperation and raising levels of understanding and commitment. Its conclusions, to be found in the Brundtland Report²⁰⁷, emphasized the need for an integrated approach to development policies leading to sustainable economic development in both developed and developing countries. Furthermore, it defined sustainable development as “development that meets present and future environment and development objectives, concluding that without an equitable sharing of the costs and benefits of environmental protection within and between countries, neither social justice nor sustainable development can be achieved.”²⁰⁸ This report led the UN to convene a second global conference, the 1991 Rio Earth Summit.

Rio Summit and the World Summit on Sustainable Development

The 1992 Rio Earth Summit, resulting in the Rio Declaration and Agenda 21, and the 2002 World Summit on Sustainable Development reflected on the link between human rights and the environment.²⁰⁹ The Rio Declaration on Environment and Development²¹⁰ emerged out of the Rio Summit and, although it contains no explicit human right to a decent environment, its Principle 10 is significant in recognizing the role of human rights, especially procedural rights, in sustainable development and protecting the environment by stating that:²¹¹

Environmental issues are best handled with [the] participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

The specificity and environmental focus of Principle 10 have not only dubbed it the most ambitious venture into human rights and the environment undertaken by states, but also further distinguishes it from existing participatory rights in the International Covenant on Civil and Political Rights (ICCPR) and regional human rights conventions and have laid the groundwork for international agreements on access to information.^{212 213}

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Its Principle 4, in particular, noted that ” “[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.” In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 11.

²¹² Kravchenko, Svitlana, Procedural Rights as a Crucial Tool to Combat Climate Change (October 27, 2010). Georgia Journal of International and Comparative Law, Vol. 38, No. 3, Spring 2010, 620. access at: <http://ssrn.com/abstract=1698828> or <http://dx.doi.org/10.2139/ssrn.1698828>.

These include: the World Charter for Nature (Principle 23), the Convention on Environmental Impact Assessment in a Transboundary Context, the UN CBD, and the Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment.²¹⁴ Meanwhile, Chapter 23 of Agenda 21 underlines the need for individuals, groups and organizations to have access to information regarding products and activities that may significantly impact environmental matters.. Section III further highlighted major groups, including women and indigenous peoples, whose participation is necessary.

Commitments to the Rio Principles, as well the full implementation of Agenda 21 and Programme for the Further Implementation of Agenda 21, were reaffirmed at the 2002 World Summit on Sustainable Development. Moreover, the UN 2005 World Summit Outcome Document²¹⁵ reaffirmed the importance of sustainable development – defining sustainable development in terms of three mutually reinforcing pillars including economic development, social development, and environmental protection – as an overarching framework for UN activities.

Narrower rights to a healthy environment include: Article 12 of the 1966 UN Covenant on Economic and Social Rights; with the World Commission on Education and Development (WCED), United Nations Economic Commission for Europe (UN ECE), World Health Organization (WHO), Organization of American States (OAS), and the UN General Assembly.²¹⁶

Other

Post-Rio and Johannesburg Summits saw an infusion of environmental norms into most branches of international law, ranging from human rights to free trade agreements.²¹⁷ Former Secretary General of the UN, Kofi Anna, spoke of utilizing a rights-based approach to environmental protection in his 1998 Annual Report on the Work of the United Nations Organizations. Furthermore, Judge Weeramantry underlined the notion that

²¹³ “The principle of public participation in international environmental law can be traced to the 1992 Rio Declaration and its Agenda 21.” In (317, Marianne Dellinger, 2012)

²¹⁴ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 262.

²¹⁵ For the Outcome Documents of the UN 2005 World Summit see: <http://www.un.org/summit2005/documents.html>.

²¹⁶ 1988 Additional Protocol to the Inter-American Convention on Human Rights, Article 11; 1989 European Charter on Environment and Health; WCED Legal Principles, Article 11; 1989 Convention on the Rights of the Child, Article 24(2)(c); 1961 European Social Charter, Article 11, on which see Trindade, in Brown Weiss (ed.), *Environmental Change and International Law* (Tokyo, 1993), 281-284 and references cited there. UNGA Resolution 45/94 (1990) ‘Recognizes that all individuals are entitled to live in an environment adequate for their health and well-being’ and calls on governments to enhance their effort in this respect. In Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press.

²¹⁷ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 12.

the enjoyment of internationally recognized human rights depends on environmental protection by stating that:²¹⁸

The protection of the environment is... a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.

This opinion particularly clearly reflected the international community's recognition that human rights are, in fact, inseparable from environmental quality. The most developed example – especially in terms of recognizing the link between human rights, the environment, and gender – is the *right to water*. The UN General Assembly (1999) asserted that, “the rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national governments and for the international community.”²¹⁹ This, in turn, led Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to impose a duty on parties to ensure women's “enjoyment [of] adequate living conditions, particularly in relations to...water supply.”²²⁰ Subsequent action was taken by the CRC²²¹, the Committee on Economic, Social and Cultural Rights' (ICESCR) General Comments No. 14²²² and 15²²³; the UN General Assembly's endorsement of a human right to safe and clean drinking water and sanitation in 2010²²⁴, the adoption of a similar resolution affirming the human right to safe drinking water and sanitation by the Human Rights Council the same year. In realizing the right to safe drinking water and sanitation – “derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity” – the HRC

²¹⁸ This was outlined in a separate opinion in *Case Concerning the Gabčíkovo-Nagymaros Project*. For more information, see: <http://www.icj-cij.org/docket/files/92/7375.pdf>.

²¹⁹ *Yearbook of the United Nations 1999. Vol. 53*. New York: Dept. of Public Information, UN, 2001, 653.

²²⁰ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 12.

²²¹ Parties agreed to “combat disease and malnutrition through the provision of adequate nutritious food and clean drinking water.” Access at: “Right to Water and Sanitation.” *Right To Water and Sanitation*. <http://www.righttowater.info/international-timeline/> (last accessed: 19 July 2013).

²²² The right to the highest attainable standard of health (2000).

²²³ The Right to Water (2002). General Comment No 15 particularly notes:

“The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights... The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal, and domestic hygienic requirements.” In Anton, Donald K., and Dinah Shelton. *Environmental protection and human rights*. Cambridge: Cambridge University Press, 2011, 129.

²²⁴ The first operative paragraph of Resolution 64/292 declares “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” Furthermore, it notes its integral component in achieving the MDGs and the Plan of the Implementation of the World Summit on Sustainable Development. Access at: <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Resolutions.aspx> (last accessed: 19 July 2013).

called upon states “to pay particular attention to persons belonging to vulnerable and marginalized groups” and “urged development partners to adopt a HRBA when designing and implementing development programs.”²²⁵ Furthermore, similar to the right to water; the right to food²²⁶, right to health²²⁷, right to life and health²²⁸ are inextricably linked to environmental quality. Climate change will affect all of these rights. Stock has also highlighted the right to water, particularly with regard to women, noting: “Is there a chance to do something similar with [Independent Expert on Human Rights and the Environment] John Knox?”²²⁹

UN Resolution 7/23 (2008)

Consequently, on 28 March 2008, the Human Rights Council adopted its first resolution on “human rights and climate change” (res. 7/23), which requested the OHCHR to conduct a detailed study on the matter.²³⁰ However, while the study²³¹ highlighted the effects of

²²⁵ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 11.

²²⁶ The Committee on Economic, Social and Cultural Rights has recognized the link between right to food and environmental policies addressing the fact that food shortages, and their associated problems, may generate further pressure on areas that are already environmentally and ecologically fragile. Additionally, the impact of climate change has been widely recognized and was brought to the attention of the Committee by its Rapporteur on the Right to Food in 2010. In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 13.

²²⁷ “[A] fifth of the disease burden in developing countries can be linked to environmental risk factors.” In CHECK. Direct causality between malaria and deteriorating ecosystems (e.g. in areas where ecological systems have been altered by irrigation projects, dams, construction sites, standing water and poorly drained areas), for example, has been established. Additionally, it has been noted that deforestation and the “consequent immigration of people into the Brazilian interior increased malaria prevalence in the region by 500 percent.” In Smith A.T.P., *The Wealth of Nations* (MIT Press, Cambridge, MA, 2002). Vulnerable groups are often particularly hard hit regarding a lack of resources (e.g. medical treatment). Consequently, it may be deduced that “the enjoyment of internationally-guaranteed rights thus depends upon a sound environment.” In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 13.

²²⁸ The right to life and health are particularly endangered by the transport and disposal of toxic and dangerous products and wastes. Increased concerns surrounding the illicit trafficking and dumping of toxic and dangerous wastes first surfaced in the 1970s. The Commission on Human Rights, in turn, affirmed the serious threat posed to the human rights to life and human health by establishing a Special Rapporteur on Toxic Waste. Both in 1998 and 2000, the conversion of the mandate of the Special Rapporteur on Toxic Wastes into a Special Rapporteur on Human Rights and the Environment was recommended – first by the Bureau of the fifty fourth Session of the Commission on Human Rights (pursuant to Commission decision 1998/112) and then by the Commission’s intersession open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights – but was never made.

²²⁹ Stakeholder Consultation with Anke Stock. Interview with the author.

²³⁰ The OHCHR-produced study particularly the implications of climate change on least developed Small Island States that will be most affected despite having contributed the least to GHG emissions. The study also highlighted the vulnerability of women and indigenous peoples.

²³¹ The study, relying on assessment reports produced the IPCC, “highlighted the implications of climate change for the rights to life, to adequate food, to safe and adequate drinking water, to health, to adequate

climate change on vulnerable groups and states, in particular, it also recognized the physical impacts of climate change “cannot easily be classified as human rights violations, not least because climate change-related harm often cannot clearly be attributed to acts or omissions of specific States...”²³² Nonetheless, it maintained that human rights, in the context of climate change, remain a critical concern and obligation under international law.

UN Resolution 10/4 (2009)

On 25 March 2009, the Council adopted Resolution 10/4 on human rights and climate change” where it, inter alia, notes that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights...”²³³ It recognizes that vulnerable peoples will be particularly affected and that international cooperation – for the sustained and effective implementation of UNFCCC²³⁴ – should be based on existing human rights obligations and commitments that may inform and strengthen international and national policy-making regarding climate change. Additionally, resolution 10/4 called for the participation of all relevant stakeholders.²³⁵

UN Resolution 16/11 (2011)

In 2011, the Human Rights Council adopted resolution 16/11 on “human rights and the environment”. The detailed analytical study on the relationship between human rights and the environment, requested as a part of the resolution, highlighted that, despite progress in understanding the link between human rights and the environment, additional questions remain. These include: Is there a need for a right to a healthy environment? If so, what should its content be? Furthermore, what are the roles and duties of private actors in this context? Is there an extraterritorial reach of human rights and the environment? Lastly, what is the best means of operationalizing and monitoring the implementation of international human rights obligations relating to the environment?

housing, and to self-determination.” In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 14.

²³² OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 14.

²³³ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 15.

²³⁴ The aim of the UNFCCC, adopted in 1992 and entered into force on 21 March 1994, is to “stabilize concentrations of GHGs in the atmosphere to prevent anthropogenic interferences in the climate system, and to allow for enough time to permit ecosystems to naturally adapt to the change; this will help ensure that food production is not threatened and allow for sustainable economic development. One of its other purposes is to raise worldwide public awareness about problems related to climate change.

²³⁵ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 15.

UN Resolution 18/22 (2011)

In September 2011, the Human Rights Council adopted its third resolution (18/22) on “human rights and climate change”, affirming that human rights obligations, standards, and principles can help strengthen and inform international and national policymaking in the context of climate change. Furthermore, they may help promote policy coherence, legitimacy, and sustainable outcomes.

HRC Resolution 19/10 (2012)

On March 22, 2012, the Human Rights Council adopted resolution (19/L.8 Rev. 1) on “human rights and the environment” and appointed an independent expert on human rights and the environment for a three-year period.²³⁶ The tasks of this Expert are to include:

- a) To study, in consultation with Governments, relevant international organizations and intergovernmental bodies, including the United Nations Environment Programme and relevant multilateral environment agreements, human rights mechanisms, local authorities, national human rights institutions, civil society organizations, including those representing indigenous peoples and other persons in vulnerable situations, the private sector and academic institutions, the human rights obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment;
- b) To identify, promote and exchange views on best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking, especially in the area of environmental protection, and, in that regard, to prepare a compendium of best practices;
- c) To make recommendations, consistent with her or his mandate, that could help the realization of the Millennium Development Goals, in particular Goal 7;
- d) To take into account the results of the United Nations Conference on Sustainable Development to be held in June 2012, and to contribute a human rights perspective to follow-up processes;
- e) To apply a gender perspective by, inter alia, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities;
- f) To work in close coordination, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies and the treaty bodies, taking into account the views of other stakeholders, including relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions;
- g) To submit a first report²³⁷, including conclusions and recommendations, to the Human Rights Council at its twenty-second session and annually thereafter.

²³⁶ The resolution was adopted with at least with 72 co-sponsors . A/HRC/RES/19/10, Human Rights and the Environment (2012).

²³⁷ To read more about the report, see: Human Rights Council, Twenty-second session, "Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox." A/HRC/22/43, 24 December, 2012 and <http://ieenvironment.org/annual-reports/>.

2.2.2. Regional

Binding international regional agreements began acknowledging the link between human rights and the environment in the 1980s. These agreements include, among others: the African Charter on Human and Peoples' Rights²³⁸; the American Human Rights Convention on Economic and Social Rights²³⁹; the European Convention on Human Rights; the revised Arab Charter on Human Rights²⁴⁰; and the UNECE's Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). Although nearly all normative instruments lack reference to the environment, the Inter-American Commission and Court of Human Rights have articulated "the right to an environment at a quality that permits the enjoyment of guaranteed rights."²⁴¹ While cases presented by applicants have, among others, asserted violations against the right to life, health, property, culture, and access to justice, the Commission has generally recognized a basic level of environmental health, not linked to a single human right, required by the very nature and purpose of human rights law.^{242 243} Governments are required to enforce laws that enact any constitutional guarantee

²³⁸ Adopted in Nairobi, Kenya, on 27 June 1981, in Article 24 proclaims that, "All peoples shall have the right to a general satisfactory environment favorable to their development." It must be noted that, in the African Charter, Article 24 only appears as a collective right. See also the 1989 Hague Declaration on Environment and Development, which appears to endorse a collective right to a 'viable' environment. Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 254.

²³⁹ Adopted in San Salvador, El Salvador, on 17 November 1998, it proclaimed: "Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation, and improvement of the environment. In 1997, the Aarhus Convention, was signed by signatories primarily from Europe and Central Asia. The Preamble to the UNECE's Aarhus Convention recognizes that "adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself." For further information on Article 24 and treaty provisions that have led to jurisprudence on the content of environmental rights, especially on cases concerning pollution and the exclusion of indigenous peoples from their lands set aside for nature preserves, see OHCHR and UNEP. (2012) "Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP" (Background Document), OHCHR-UNEP Joint Side Event, "Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1", United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 16.

²⁴⁰ It's Article 38 specifies: "Every person has the right to an adequate standard of living for himself and his family, that ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights."

²⁴¹ OHCHR and UNEP. (2012) "Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP" (Background Document), OHCHR-UNEP Joint Side Event, "Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1", United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 17.

²⁴² Furthermore, it has stated that: "The American Convention on Human Rights is premised on the principle that rights inhere in the individual simply by virtue of being human. Respect for the inherent dignity of the person is the principle which underlies the fundamental protections of the right to life and to preservation of physical well-being. Conditions of severe environmental pollution, which may cause serious physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being." In Wet, Erika, and Jure Vidmar. *Hierarchy in International Law the Place of Human Rights..* Oxford: OUP Oxford, 2012, 224.

²⁴³ The *Yanomami v. Brazil* case, as well as other cases and country studies, have clarified issues regarding the enforcement of appropriate laws and regulations under the Inter-American system.

of “a particular quality of environment”.²⁴⁴ In this regard, the Commission has been clear in stating that: “Where the right to life, to health and to live in a healthy environment is already protected by law, the Convention requires that the law be effectively applied and enforced.”²⁴⁵

In Europe, human rights tribunals have effectively linked various human rights to environmental protection by referencing international environmental principles, standards, norms, as well as the European Convention on Human Rights²⁴⁶. Two cases of the European Court of Human Rights, in particular, consider the right to environment: *Di Sarno and others v. Italy* (No.30765/08, 10 January 2012) and *Băcilă v. Romania* (No. 19234/04, 30 March, 2010). In the case of *Di Sarno and others v. Italy* (No.30765/08, 10 January 2012) it was concluded that, although the people had not yet experienced concrete damage to their healthy, “[t]he collection, treatment and disposal of waste were hazardous activities; as such, the State had been under a duty to adopt reasonable and appropriate measures capable of safeguarding the right of those concerned to a health and protected environment.”²⁴⁷ In the latter case, *Băcilă v. Romania* (No. 19234/04, 30 March, 2010), the Court confirmed its step on a case where the applicants were affected by the operation of an industrial plant that was operating in gross excess of applicable environmental standards.

Furthermore, European Courts have emphasized the importance of enforcing national environmental rights provisions and have, thus, given substantive content to environmental rights corresponding to state obligations.²⁴⁸ In the *Taskin and Others v. Turkey*²⁴⁹ case, applicants alleged that the development and operation of a gold mine caused environmental damage that was detrimental to the people of the region. The European Court built its case-law on the right to respect private and family life (Art. 8 of the European Convention) and largely based matters of environmental protection on principles enshrined in the Aarhus Convention (Rio Principle 10). The case was won in domestic courts, with the Turkish Supreme Administrative Court concluding that the operating permit did not serve public interest and the company’s safety measures were

²⁴⁴ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 29.

²⁴⁵ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 18.

²⁴⁶ This includes the right to life, right to respect for private and family life, right to a fair hearing, and the right to property under Protocol 1.

²⁴⁷ For more information on this case, see: <http://tinyurl.com/c5upkwq>.

²⁴⁸ For example, in the *Oneriyildiz v. Turkey* judgment, the European Court referred to the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment and the Convention on the Protection of the Environment through Criminal Law even though a majority of the member states, including the respondent State, had not signed or ratified the two Conventions. In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 16.

²⁴⁹ “Case Law by the European Court on Human Rights.” *Right To Environment*. See: <http://www.righttoenvironment.org/default.asp?pid=91> (last accessed: 19 July 2013).

insufficient in eliminating the involved risks. Similarly, the ECJ concluded that the government had “violated the human rights of the applicants by failing to enforce its own environmental laws.”^{250 251} Additional cases, that will not be examined in this report, but should be mentioned are the ECHR judgment in the *Affair Tatar c. Roumanie* (App. No. 67021/01), delivered on 17 March 2009, and *Okçay and Others v. Turkey*.²⁵²

Aarhus Convention

Promotion of the Aarhus Principles in International Forums

The provisions of the Aarhus Convention build upon the 1995 Sofia Draft Guidelines on Access to Information and Public Participation in Environmental Decision Making.²⁵³ While the Sofia Draft Guidelines only focused on implementation of these principles at the national and subnational levels, the Aarhus Convention also explicitly provides a legally binding obligation for its parties to promote these principles in international governance.

*Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.*²⁵⁴

This article reflects the experience of the parties to the Aarhus Convention when negotiating the provisions of the convention as this negotiating process was considered as particularly participatory.²⁵⁵ It also highlighted the willingness of the parties to ensure that the principles of the Aarhus Convention would also be promoted outside of the UNECE regions in third states.²⁵⁶ This objective is also reflected in the possibility open to non-

²⁵⁰ Additionally, “the Court also quoted from a Parliamentary Assembly resolution on environment and human rights that addressed the substantive issues in the case. The Parliamentary Assembly resolution recommended that Member States ensure appropriate protection of life, health, family and private life, physical integrity and private property, taking particular account of the need for environmental protection, and that Member States recognize a human right to a healthy, viable and decent environment. The latter includes the objective obligation for States to protect the environment in national laws, preferably at the constitutional level. Given this recommendation and the domestic Constitutional guarantees, the Court found a violation despite the absence of any accidents or incidents with the mine. The mine presented an unacceptable risk.” In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 16-17.

²⁵¹ The European Court has also provided indications of the required environmental quality for complying with the European Convention’s substantive guarantees. The first major decision including environmental harm as a breach of the right to private life and the home, as guaranteed by Article 8, the ECJ held that “severe environmental pollution may affect individuals’ ‘well-being’” to the extent that it constitutes a violation of Article 8. For more information see: <http://www.righttoenvironment.org/default.asp?pid=2>.

²⁵² In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 17.

²⁵³ UNECE Environment for Europe, 2nd Conference, Sofia 1995.

²⁵⁴ Aarhus Convention, Article 3.7.

²⁵⁵ Dannenmauer, at 41.

²⁵⁶ Ibid at 45.

UNECE states to access to the convention, an opportunity which we will further discussed below.

Almaty Guidelines

In order to further implement the provision of Article 3.7 of the Convention, parties adopted the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in international Forums during the second Meeting of the Parties (MOP).²⁵⁷ As the other international instruments mentioned above do not address the issue of procedural rights in international decision-making, the Almaty Guidelines constitute the most articulate international documents promoting procedural rights at the international level. They provide normative foundations and procedural safeguards that guarantee that the views of those affected are or will be reflected in the final policy outcome.²⁵⁸

The Almaty guidelines do not specifically refer to the needs and interests of any particular group of stakeholders such as indigenous peoples or women. The guidelines reflect another approach to public participation in international decision-making processes as they are currently implemented through many intergovernmental processes. Environmental Intergovernmental organizations often structure public participation in a way ensuring that the voices of different stakeholders can be represented adequately, either on the basis of regional representation²⁵⁹ or in relation to categories of stakeholder.²⁶⁰ Following the practice applied at the meetings of the Aarhus bodies where participation by stakeholders is not structured under such categories, the Almaty Guidelines omit reference to the need for different groups to be represented.

The Almaty guidelines, however, do explicitly emphasize that special measures are set in place in order to ensure the participation of marginalized groups, emphasizing factors related to their marginalization rather than referring to pre-established groups.

*Where members of the public have differentiated capacity, resources, socio-cultural circumstances or economic or political influence, special measures should be taken to ensure a balanced and equitable process. Processes and mechanisms for international access should be designed to promote transparency, minimize inequality, avoid the exercise of undue economic or political influence, and facilitate the participation of those constituencies that are most directly affected and might not have the means for participation without encouragement and support.*²⁶¹

In practice, secretariats of UN processes have often relied on the categorization of various groups of stakeholders among several categories or major groups in order to manage practical challenges related to the participation of large amount of stakeholders. The Almaty Guidelines provide guidance with regard to limitations restricting access to

²⁵⁷ MOP Decision II/4 (2005).

²⁵⁸ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 39.

²⁵⁹ For instance UNEP.

²⁶⁰ For instance UNCSD, UNFCCC, CDB.

²⁶¹ Almaty Guidelines, para. 15.

international fora where such measures are *necessary* and *unavoidable* for practical reasons.

*Selection criteria may include field of expertise, representation in geographic, sectoral, professional and other relevant contexts, and knowledge of the working language, having due regard for paragraphs 17 and 18 [referring to the importance of providing support for capacity building as well as financial resources].*²⁶²

These provisions provide an opportunity to strengthen the representation of most stakeholders groups, including women and indigenous peoples, and could be more systematically referenced when defining modalities for stakeholder engagement in intergovernmental processes and when developing mechanisms, including funding mechanisms, to support effective public participation in such processes.

Institutional Arrangements related to PPIF

Parallel to the decision to adopt the Almaty Guidelines, parties also agreed on establishing a three-year task force to promote the implementation of the guidelines in consultation with other international fora. The mandate of the task force was extended for another three years at the third meeting of the parties.²⁶³ The task force met six times during this period, Finland being represented at only some of these meetings. The two main activities of the task force consisted of gathering information relative to best practices among international environmental institutions and organizing thematic discussions focused on specific international fora. The UNFCCC secretariat, among other international bodies, responded to the survey conducted by the Aarhus secretariat.²⁶⁴ Several examples of best practices were, thus, drawn from the experience of the UN climate change negotiations in relation to the promotion of access to information, public participation and access to review procedures in international environmental governance.²⁶⁵

The provision of the Almaty Guidelines specifies that the promotion of these principles shall apply at all stages of decision-making, including in relation to the work of the subsidiary bodies.²⁶⁶ With regard to the international climate change regime, established under the UNFCCC, these provisions clarify that Parties' commitment to the Aarhus Convention promotes stakeholders' procedural rights extend to the various processes established at the international level and, thus, apply to institutions such as the Green Climate Fund or the governance of the Flexibility Mechanisms established under the Kyoto Protocol. Following concerns raised by stakeholders in the aftermath of the UNFCCC 15th Conference of the Parties taking place in 2009 in Copenhagen, the UNFCCC was discussed specifically at the fifth and sixth meetings of the task force. On

²⁶² Almaty, para. 31.

²⁶³ MOP decision III/4, para 2 (2008).

²⁶⁴ Response from the UNFCCC Executive Secretary to the chair of the working group of the parties to the Aarhus Convention, YdB/BB/dtd, 06-6482.

²⁶⁵ UNECE. (2011) "Innovations in Public Participation in International" Sixth meeting of the Task Force on Public Participation in International Forums and workshop. Access at: <http://www.unece.org/environmental-policy/treaties/public-participation/meetings-and-events/public-participation/2011/sixth-meeting-of-the-task-force-on-public-participation-in-international-forums-and-workshop/docs.html>.

²⁶⁶ Almaty Guidelines, para 4 and 29.

the basis of the discussions resulting from these presentations, the working group recommended concrete actions by the parties to the convention actively continue to promote actively the principles of the Aarhus Convention in relation to the UNFCCC process.²⁶⁷

In order to mainstream the work of the convention on the application of its principles in international forums, the parties decided to discontinue the task force during the fourth Meeting of the Parties (2011) and mandated the Working Group of the Parties to continue work related to the promotion of the principles of the convention in international environmental governance.²⁶⁸ This builds on the decision to reorganize the institutional structure, established under the Convention, with only three task forces continued after the MOP-4, each focusing on one of the three pillars of the Convention. Since the adoption of this decision, the WGP met twice in September 2012 and June 2013. Both of the meetings hosted a special session dedicated to the issue of Public Participation in International Fora. The organization of these thematic sessions during the WGP lowered the costs of the proceedings compared to the organization of separate events and enable a higher level of attendance of the sessions with most of the parties to the convention actually represented at the WGP. On the other hand, this new format led to a reduction of the available time for discussions focusing on PPIF. At both meetings of the WGP, the thematic session was reduced to a half-a-day event, thus, limiting the amount of time dedicated to each of the panels organized during the thematic session. Furthermore, due to the absence of time allocated for deliberation among parties as a response to the presentation delivered, the 16th session of the WGP has failed to endorse any particular proposals highlighted during the various panels, as it only noted the outcomes of the presentations, whereas meetings of the Task Force and of the thematic session held during the 15th WGP directed parties to take specific actions.²⁶⁹ During past meetings and sessions dedicated to public participation in international forum, the lack of coherence within national administration has repeatedly been highlighted as an obstacle to the full implementation of the obligation contained in article 3.7, as country delegates representing Aarhus parties in other international forums are often unaware of the legal obligation.

2.2.3. National

“There is, moreover, a growing trend to give environmental protection constitutional status in many national legal systems, either explicitly,²⁷⁰ or by judicial interpretation of other constitutional guarantees.”²⁷¹ Constitutional and legislative provisions setting forth the right to an environment of a specified quality, such as a healthy, safe, secure, clean, or ecologically sound environment have been drafted by lawmakers at a national level. Since the 1970s, around 130 have included a state obligation to protect the environment or a right to a safe, healthy, ecologically balanced environment.

²⁶⁷ Aarhus Convention WGP-12/Inf.5, item 5 (b).

²⁶⁸ MOP decision IV/3, para. 7 (2011).

²⁶⁹ Paras in the report of the WGP15.

²⁷⁰ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 252-253.

²⁷¹ CI Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 252-253.

2.3. Human Rights & Climate Change

As legal concepts, human rights obligations must be found in accordance with the doctrine of sources of international law. The principal international human rights instruments include the Universal Declaration of Human Rights²⁷² (UDHR), the ICESCR²⁷³ and other international treaties including, among others, the Convention on the Elimination of All Forms of Racial Discrimination²⁷⁴ and CEDAW²⁷⁵. Under international human rights law, states have two duties: to cooperate in preventing the violation of human rights and protecting human rights within their own territories.²⁷⁶ States are to act based on their available resources and realize individuals' rights and should hold those who are most responsible for human rights' violations accountable.²⁷⁷ Human rights treaty provisions have established a framework for claims and duties between individuals (and to some extent groups) and the state.²⁷⁸ This includes the right and responsibility of the international community to respond to violations of rights laid down in international human rights instruments.²⁷⁹ These rights, outlined in the Universal Declaration of Human Rights, serve as foundational rights utilized and elaborated on by a multitude of human rights instruments.²⁸⁰ Article 19 of the UDHR proclaims the right to freedom of opinion and expression, including "freedom...to seek, receive, and impart information and ideas through any media and regardless of frontiers."²⁸¹ Article 22 provides that economic, social and cultural rights should be realised "through national effort and international cooperation."²⁸² Through cooperation, states have the opportunity to safeguard their

²⁷² UN GA Res. 217A (III), The Universal Declaration of Human Rights, 10 December 1948, UN Doc. A/810 (1948), 71.

²⁷³ International Covenant on Economic, Social and Cultural Rights, GA Res. UNTS No. 14531, 6 International Legal Materials (1967), 360.

²⁷⁴ Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, UNTS No. 9464, 5 International Legal Materials, 352.

²⁷⁵ Convention on the Elimination of All forms of Discrimination Against Women, adopted 18 December 1979, entered into force 3 September 1981, GA Res. 34/180, UN Doc. A/34/46 (1979), 19 International Legal Materials (1980), 33.

²⁷⁶ Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) "Human Rights and Climate Change: Practical Steps for Implementation", 8.

²⁷⁷ Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-Bell-Stiftung, 15.

²⁷⁸ McInerney-Lankford, Siobh n. (2009) "Climate Change and Human Rights: An Introduction to The Legal Issues", 33 *HARVARD ENV. L.REV.*, 434; Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 53; Invoking the notion of human rights entails both rights and duties, and in each case, for human rights to have meaning, one must identify a right-holder and a duty-bearer so as to permit an actionable claim. McInerney-Lankford, Siobh n. (2009) "Climate Change and Human Rights: An Introduction to The Legal Issues", 33 *HARVARD ENV. L.REV.*, 433.

²⁷⁹ Ministry for Foreign Affairs of Finland. (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 7.

²⁸⁰ World Health Organization. (2011) The Social Dimensions of Climate Change (Discussion Draft), 10-11.

²⁸¹ Kravchenko, Svetlana, Procedural Rights as a Crucial Tool to Combat Climate Change (October 27, 2010). Georgia Journal of International and Comparative Law, Vol. 38, No. 3, Spring 2010, 618. Available at: <http://ssrn.com/abstract=1698828> or <http://dx.doi.org/10.2139/ssrn.1698828>.

²⁸² Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 48.

citizens' right, including the right to life and an adequate standards of living (Articles 3 and 25). Meanwhile, Article 28 notes that, "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully utilised."²⁸³

Climate change policy, specifically, and international environmental law, more generally, look to develop sustainable methods for combating radical anthropogenic environmental harms (real and anticipated), including transboundary harm, that negatively affect human welfare. In the climate change regime, procedural fairness, environmental justice, and arguments for immediate climate change action have emerged as important principles without reference to human rights and, thereby, serve to disregard the vulnerability of those who are already marginalized. The current framework for climate change, as will be outlined later, does not consider human rights in adaptation planning, which does not coincide with Principle 10 of the Rio Declaration.

However, while the climate change regime has been slow to adopt a rights-based approach, human rights institutions have also only recently begun considering climate change as a human rights issue, as opposed to a mere environmental problem. Nonetheless, the link between human rights and the implications of climate change continues to surface on the agenda of international human rights bodies and the use of the concept in a non-binding context gives credence to the claim of its recognition.²⁸⁴ The 2009 Human Rights Council consensus Resolution 10/4 on human rights and climate change, in particular, recognized that individuals are a central concern to sustainable development noting that, "human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes."²⁸⁵ Furthermore, in its report on mapping the general HR consequences of climate change, the OHCHR has drawn on the jurisprudence of human rights tribunals with regard to environmental threats to human rights. Its report examines those human rights that are most affected by climate change noting that, although universal human rights treaties do not recognize a right to a safe and healthy environment, human rights bodies recognize "the intrinsic link between the environment and the realization of a range of human rights."²⁸⁶ Additionally, it focuses on

²⁸³ Despite its non-binding nature, the Universal Declaration of Human Rights has been adopted both internationally and nationally. Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 48.

²⁸⁴ Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 16 and 19.

²⁸⁵ Human Rights Council, Tenth Session, Resolution 10/4 on Human Rights and Climate Change, see: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf; The resolution was supported by 88 UN member states from various regions. Kravchenko, Svitlana, Procedural Rights as a Crucial Tool to Combat Climate Change (October 27, 2010). Georgia Journal of International and Comparative Law, Vol. 38, No. 3, Spring 2010, 647.

²⁸⁶ As noted, climate change impacts the realization of various human rights. These include, *inter alia*, the right to life itself, which has been recognized by international human rights treaties and customary law, including Article 3 of the Universal Declaration on Human Rights, Article 6 of the CCPR, as well as in the United Nations Convention on the Rights of the Child. Article 3 of the Universal Declaration on Human Rights states that, "everyone has the right to life, liberty, and security of person." Article 6 of the CCPR states that, "every human being has the inherent right to life." In Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 24; Malé Declaration, Human dimension of Global Climate Change, Adopted 14 November 2007, Malé;

the duty of international cooperation and emphasizes access to information and participation in decision-making.²⁸⁷ Although the OHCHR report declines to conclude that climate change is a violation of human rights itself, states' legal duties concerning climate change *are* grounded in human rights law.²⁸⁸

Such work also reflects governments' acknowledgment of the complexity (and, at times, complementary objectives) found at the intersection of political, environmental, social, and economic concerns in sustainable development.²⁸⁹ Several international human rights standards can be identified and defended via non-treaty sources, based on a sixty-year history of "standard-setting and norm consolidation in the human rights field, ultimately resulting in comprehensive and detailed and comparatively mature and elaborate compliance mechanisms at international and regional levels."²⁹⁰ Several of these international human rights instruments also explicitly address the linkage between the protection of the environment and the enjoyment of human rights.²⁹¹ These include: the UDHR, the ICESCR (Art. 1, 3, 11), ICCPR, UNDRIP, CEDAW, CRC, and the Beijing Declaration, as well as selected Conventions adopted under the auspices of specialized UN agencies, such as ILO Convention 169.²⁹² Although it is outside the scope of this report, it must be emphasized that human rights institutions could further their use of, among other measures, human rights tools (e.g. monitoring guidelines, indicators, benchmarks) in assessing vulnerability to climate change effects and evaluating climate change policies.²⁹³

As we can see, the concept of a "human right to the environment" has only recently emerged, albeit with limited traction in international, regional, and national jurisprudence.²⁹⁴ Current climate change and human rights regimes show parallels in their

Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 252-253; Knox, John H. (2009) *Linking Human Rights and Climate Change at the United Nations*. Harvard Environmental Law Review 33, 486.

²⁸⁷ Knox, John H. (2009) *Linking Human Rights and Climate Change at the United Nations*. Harvard Environmental Law Review 33, 477; World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 5.

²⁸⁸ Knox, John H. (2009) *Linking Human Rights and Climate Change at the United Nations*. Harvard Environmental Law Review 33, 478 and 491.

²⁸⁹ Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 11; World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 6.

²⁹⁰ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 27.

²⁹¹ Limon, Marc (2009). "Human Rights and Climate Change: Constructing a Case for Political Action", 2 *Harvard Environmental Law Review* 33, 470.

²⁹² Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) "Human Rights and Climate Change: Practical Steps for Implementation", 10.

²⁹³ Caesens, Elisabeth, and Maritere Rodr guez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 140.

²⁹⁴ According to Heinämäki, "after receiving what seemed like steadily growing international support, progress towards an outright recognition of an individual right to the environment (as opposed to a right embodied in specialized treaty and policy regimes) reached a plateau with the Rio Conference and Declaration. In Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 16; Nonetheless, the Inter-American Commission on Human Rights has recognized the relationship between environmental degradation and the right to health, especially in the context of indigenous peoples. In Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) "Climate Change and Human Rights" in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 299.

development, but have not necessarily resulted in “a right to the environment” *per se*. However, both regard a clean environment, as a *sine qua non* for numerous human rights and view sustainability as a key principle in tackling the deleterious effects of environmental degradation and development, respectively.²⁹⁵ Finland’s Parliamentary Ombudsman highlighted this in their Annual Report (2011) by stating that, “the environment must be preserved and remain viable so that all other fundamental rights can be implemented.”²⁹⁶ Some have even noted that it is merely aspirational, embodied in non-binding declaratory documents with vague proclamations.²⁹⁷ This is, in part, due to outstanding definitional questions and challenges in postulating a right to the environment in qualitative terms, which is often regarded as a value judgement.²⁹⁸ There is ambiguity and uncertainty in defining what constitutes a satisfactory, decent, viable, or healthy environment. Moreover, it features most prominently in the realm of soft law.²⁹⁹

2.4. Environmental Rights

While the link between climate change and human rights may seem self-evident, the “specific contours of substantive and procedural duties relating to the environment require further clarification.”³⁰⁰ The notion of a human right to a clean environment has been around for many years.³⁰¹ However, its focus has shifted from its very existence to more

²⁹⁵ Limon, Marc (2009). “Human Rights and Climate Change: Constructing a Case for Political Action”, 2 *Harvard Environmental Law Review* 33, 469.

²⁹⁶ Furthermore, during the revision of Finland’s fundamental rights provisions of its Constitution, a separate provision concerning the right to a healthy environment was included in the list of fundamental rights. It contained elements: “first of all, everyone bears responsibility for nature, the environment and the cultural heritage as well as secondly an obligation on the public authorities to strive to safe-guard for everyone the right to a healthy environment and the possibility to influence the decisions that concern their own living environment.”²⁹⁶ The Annual report continues in noting that the possibility to influence environmental decisions often goes hand-in-hand with the fundamental right to protection under law.²⁹⁶ Thus, although a right to the environment may not be explicitly recognized, existing substantive human rights (the right to life, health, and property, among others) and procedural human rights (participatory rights or the rights to effective remedies) may be applied in an environmental context by existing human rights monitoring bodies. In Parliamentary Ombudsman of Finland (2011) “Summary of the Annual Report”, 58-59, access at: <http://www.oikeusasiamies.fi/dman/Document.phx?documentId=in29012125858656&cmd=download> (last accessed: 26 July 2013).

²⁹⁷ Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 17-18.

²⁹⁸ Ibid 17.

²⁹⁹ Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 36.

³⁰⁰ UNHR. (2013) Environment and human rights: the link is there, and so is the States’ obligation to protect them – UN expert Access at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13089&LangID=E>.

³⁰¹ Publications on this subject include, among others: Desgagne, R. “Integrating Environmental Values into the European Convention Human Rights”, 89 *AJIL* (1995) 263-94; Thorme, M. “Establishing Environment as Human Right”, 19 *Den. J. Int’ IL. & Pol’y* (1991) 301, at 301-41; Boyle, A. and M. Anderson (eds), *Human Rights Approaches to Environmental Protection* (1996); Shelton, D. “What Happened in Rio to Human Rights?”, 3 *YBIEL* (1992) 75, at 75-93; Shelton, D. “Human Rights, Environmental Rights and the Right to the Environment”, 28 *Stanford J. Int’l L.* (1991); 103, at 103-38; Kiss, A. and D. Shelton. *International Environmental Law* (2004), at 661-731; Handl. G. “Human Rights and Protection of the Environment: A Mildly ‘Revisionist’ View”, in Cancado Trindade, A.A. (eds.) *Human Rights, Sustainable Development and*

practical aspects, such as the distinction between substantive and procedural human rights to a clean environment (e.g. participation in environmental decision-making, etc.). Early debates particularly focused on the vagueness of such a right – should it be the right to a decent, safe, or healthy environment?³⁰²

Environmental rights may be classified according to their procedural or substantive nature. An inherent aspect of both procedural and substantive rights is their reinforcement of one another, highlighted in the World Commission on Environment and Development, stating that:³⁰³

*Recognition by states of their responsibility to ensure an adequate environment for present as well as future generations is an important step towards sustainable development. However, progress will also be facilitated by recognition of, for example, the right of individuals to know and have access to current information on the state of the environment and natural resources, the right to be consulted and to participate in decision-making on activities likely to have a significant effect on the environment, and the right to legal remedies and redress for those whose health or environment has been or may be seriously affected.*³⁰⁴

As noted in a joint report by the OHCHR and UNEP on Human Rights and the Environment, the “protection of the environment and the promotion of human rights are increasingly seen as intertwined, complementary goals, and part of the fundamental pillars of sustainable development.”³⁰⁵ With common interests and objectives, they depend on the exercise of certain human rights – rights to information, public participation in decision-making and access to justice. Furthermore, “compliance with environmental laws and standards necessitates knowledge of them as well as of environmental conditions.”³⁰⁶ Providing opportunities for local communities to participate in decision-making processes may lead to better decisions.

2.4.1. Substantive Rights

the Environment (1992) 117; Handl, G. “Human Rights and Protection of the Environment”, in Eide, A *et al.* (eds.) *Economic, Social and Cultural Rights: A Textbook* (2001) 303, at 303-28; Fitzmaurice, M. “Some Reflections on Public Participation in Environmental Matters as a Human Right in International Law”, 2 *Non-State Actors and International Law* (2002) 1, at 1-22; Hancock, J. *Environmental Human Rights: Power, Ethics and Law* (2003); Hayward, T. *Constitutional Environmental Rights* (2005).

³⁰² Desgagne, R. “Integrating Environmental Values into the European Convention Human Rights”, 89 *AJIL* (1995) 263-4.

³⁰³ Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 4.

³⁰⁴ Brundtland, Gro-Harlem (ed.), *Our Common Future*, The World Commission on Environment and Development (1987), 330.

³⁰⁵ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 36.

³⁰⁶ *Ibid* 24.

There are three generations of international human rights norms:³⁰⁷ 1) first-generation rights include civil and political rights, such as the right to life; 2) second-generation rights include economic, social and cultural rights, such as the right to an adequate standard of living; and 3) third-generation rights include collective rights, such as the right to self-determination, the right to development, and the right to culture. Collective rights, in particular, are the least developed and often vague in content. Meanwhile, civil and political rights, on the one hand, and economic, social and cultural rights, on the other hand, have been specified in numerous international human rights instruments, regional human rights treaties, and jurisprudence concerning these instruments.³⁰⁸

The right to a decent environment could be located in all three generations. First-generation rights are fundamental in guaranteeing a political order supportive of issues such as sustainable development and a decent state of the environment. Meanwhile, second-generation rights can protect the production and distribution of ecological knowledge, as well as civil mobilization around environmental protection. Rights to environmental information and participation in environmental decision-making are a part of the more general concept of the right to a decent environment. However, claiming environmental protection through political rights is not an easy feat. There are said to be “only a handful of cases in which existing civil and political rights have been applied to environmental complaints, and even these have met with mixed success.”³⁰⁹ It is, thus, necessary to establish a special right to ensure a decent environment.³¹⁰

A key argument for adopting an autonomous right to a decent environment is the enhanced status of environmental quality when balanced against competing objectives and other human rights, including the right to property.³¹¹ It also lies within the recognition of the environment’s importance as a basic condition of life, “indispensable to the promotion of human dignity and welfare, and to the fulfilment of other human rights.”³¹² At its narrowest, the right to a decent environment is an argument for promoting environmental responsibility, while also improving government policies. On a broad scale, it is the application of arguments for democratic governance, as a human right, of environmental matters.³¹³

³⁰⁷ Koivurova, Timo, Tanja Joona, and Reija Shnor. (2004) *Arctic Governance*. Rovaniemi [Finland]: Oy Sevenprint, 152.

³⁰⁸ For a more detailed understanding of the three generations, see: Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 3.

³⁰⁹ Anderson, Michael R., *Human Rights Approaches to Environmental Protection: An Overview*, in Boyle, Alan – Anderson, Michael R. (eds.), *Human Rights Approaches to Environmental Protection*, (1998), 5.

³¹⁰ Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 4.

³¹¹ See Birnie’s citation for a list of cases in which environmental protection measures have been challenged under Article 1 of Protocol 1 of the European Convention on Human Rights. In Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 289.

³¹² See separate opinion of Judge Weeramantry, *Gabcikovo-Nagymaros Case*, *ICJ Rep.* (1997), 7, and Pathak, in Brown Weiss (ed.), *Environmental Change and International Law* (Tokyo, 1993), Ch. 8; In Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press.

³¹³ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 261.

Principal objections to the notion of an autonomous human right to a decent environment include: uncertainty, anthropocentricity, and redundancy.³¹⁴ Additional difficulties include: 1) the inefficiency of developing environmental standards in response to individual complaints; 2) the inappropriateness of human rights bodies for the task of supervising obligations of environmental protection; and 3) the fundamentally anthropocentric character of viewing environmental issues through a human rights focus.³¹⁵ Moreover, the environmental human right, as a third-generation right, has been regarded as problematic as the category itself is controversial, less developed than the other two generations and, according to Fitzmaurice, “[d]ue to the inherent character of these rights, their application in relation to the environmental human right would make the main beneficiaries developing States.”³¹⁶ Another view draws on existing human rights³¹⁷ – rights enshrined in CCPR and CESC – in defining the content of the right to a clean environment, thus acquiring some sort of normativity. However, the existing system for implementing and monitoring second-generation rights, in particular, is narrowly construed and only takes an indirect approach to the environment.³¹⁸ Similar scepticism arises with the third view, which regards such a right as a mixture of civil and political, on the one hand, and social, economic and cultural rights, on the other hand. More recent discussions, focusing on the distinction between substantive and procedural human rights to a clean environment, have gained importance since the Aarhus Convention entered into force in 2001. As Fitzmaurice notes, “it is generally thought that the procedural environmental right is a more effective and flexible tool in achieving environmental justice than a substantive right, which frequently does not grant any procedural rights to information, participation or judicial justice, and thus is to a large extent only a policy statement.”³¹⁹

2.4.2. Procedural Rights

In an environmental context, focusing on procedural rights has an advantage in that they are more concrete in nature than vague substantive environmental standards and may, thus, be more easily defined and enforced. By contributing to the process of democratization, procedural rights may also lead to positive effects beyond environmental protection.³²⁰ Policies that are designed and implemented without the inclusion of affected parties immediately undermine their success and are inherently at risk of not fulfilling the needs

³¹⁴ For a more detailed discussion on these three objections, see: Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 256-259.

³¹⁵ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 256.

³¹⁶ Fitzmaurice, M. (2009) *Contemporary issues in international environmental law*. Cheltenham, UK: Edward Elgar, 172.

³¹⁷ These include the right to life (first-generation) and the right to an adequate standard of living for health and well-being (second-generation).

³¹⁸ Anderson, M. “Human Rights Approaches to Environmental Protection: An Overview”, in M. Anderson (eds), *Human Rights Approaches to Environmental Protection* (1996), 6.

³¹⁹ See the following for a more in-depth analysis: Hayward, T. *Constitutional Environmental Rights* (2005), 84-92.

³²⁰ Coffey, Clare. (2000) *The EU Charter of Fundamental Rights – The Place of the Environment*, in Feus, Kim (ed.), *The EU Charter of Fundamental Rights. Text and Commentaries*, 134.

and priorities of the affected community.³²¹ Policies may be technically inappropriate, too costly or unrealistic, thus, contributing to growing inequality and vulnerability.³²² Consequently, there are multiple advantages that come alongside procedural rights.

With the aim improving procedural fairness and accountability, there are numerous elements that add value to environmental governance and provide procedural guarantees for already marginalized groups. Focusing on meaningful participation, access to information, transparency, and accountability, they add normative traction to both mitigation and adaptation policies. The notion of who is participating and who should be entitled to participate in the development and implementation of climate change policy is, thus, an inherent question when emphasising the link between climate change and human rights. This is particularly relevant as participatory rights have the longest history and secure standing in environmental law.³²³ Environmental governance and sustainable governance require participatory decision-making in reflecting existing human rights.³²⁴ While the Aarhus Convention, soft-law instruments like the Rio Declaration's Principle 10³²⁵, and UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Bali Guidelines) focus on procedural rights, such "good process" principles are not as commonplace among all Multilateral Environmental Agreements.³²⁶

How can procedural rights across various international regimes help ensure the human rights of already marginalized groups? Procedural rights can systematically include or exclude marginalized groups, engage affected parties, enable participatory rights, provide focus, reshape institutions, and reduce vulnerability. Participation can prod political processes and play an important role, even if it cannot solve climate change

³²¹ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 13.

³²² *Ibid* 31.

³²³ In Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press, 308.

³²⁴ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 13-14.

³²⁵ Principle 10: Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided. Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 30.

³²⁶ Multilateral Environmental Agreements are generally framed around transboundary harms with a comparatively pressing appeal – on empirical, ethical and legal grounds – to theories of international responsibility and collective action. In Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 15; Existing MEAs generally focus on governing relations between states, despite also often providing other actors with participatory roles. They are dependent on reciprocity, grounded in mutual action, and result in different requirements for various states (including refraining from transboundary harm). The UNFCCC, for instance, acknowledges the adverse effects of climate change on human health and welfare, requiring parties "to account for, *inter alia*, health impacts in relevant social, economic, and environmental policies." Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) "Climate Change and Human Rights" in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 298; Bodansky, Daniel. (2010) "Climate Change and Human Rights: Unpacking the Issues" *Georgia Journal of International and Comparative Law* 38, 5.

challenges on its own.³²⁷ As they continue to mature into universally applicable human rights principles, it is desirable to emphasize the procedural principles of human rights within the climate change regime and development cooperation.³²⁸ They can help reshape institutions at various governance levels in line with the principles of good governance and equity, and may reduce climate change vulnerability.³²⁹ Ensuring procedural equity – the right to be heard and the right to affect decisions, as well as freedom of expression and association³³⁰ – can help produce more efficient and, in turn, effective results on the ground. To date, participation in international law has been regarded as clear – states are the primary subjects who create international legal rules and principles, while the participation of other actors in international norm making is not guaranteed. However, insofar as states have committed themselves to upholding international human rights, they are also under legal obligation to strengthen procedural rights in international environmental decision-making. Consequently, one objective in opening up decision-making processes is the widening of the range of voices heard. Including marginalized groups, such as women and indigenous peoples, who are least likely to be heard at the negotiating table or be involved in consultations, may alleviate unintended consequences, empower them, and aid in the realization of their human rights.

While procedural rights may help ensure that contextual factors are better accounted for in environmental decision-making, they also have significant transaction costs (e.g. the production and distribution of environmental information, arranging public participation, etc.). Moreover, the need for specific procedural environmental rights is often denied by stating that those rights are already included in existing human rights. The environmental aspect and its special requirements, though, are not often very well accounted for in current instruments. Furthermore, secured procedural environmental rights are specifically designed to protect environmental interests and their use in many instances could allow potential victims to prevent or mitigate environmental human rights abuses before they occur. This is critical since environmental degradation is often irreversible.³³¹

As we can see, generally, in legal instruments and jurisprudence, as well as in doctrine – in linking human rights to environmental protection, procedural rights (access to information, public participation in decision-making, and access to justice) have received the greatest attention.³³² While effective compliance with environmental laws is essential,

³²⁷ Bodansky, Daniel. (2010) "Climate Change and Human Rights: Unpacking the Issues" *Georgia Journal of International and Comparative Law* 38, 14.

³²⁸ Observers include governments who are not party to the Convention (or the Kyoto Protocol), intergovernmental organizations, and other stakeholders. Their participatory rights in the UNFCCC are defined by the COP. In Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) "Climate Change and Human Rights" in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 306 and 324.

³²⁹ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 31.

³³⁰ Ibid 24-25.

³³¹ Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 4.

³³² For example, in a speech on July 5 2011, UN Secretary-General Ban Ki-Moon noted that the Aarhus Convention on Access to Information, Public Participation and Access to Justice "is more important than ever". He continued by stating that, the "treaty's powerful twin protections for the environment and human rights can help us respond to many challenges facing our world, from climate change and the loss of

this also necessitates knowledge of laws, standards, and environmental conditions. Furthermore, indigenous and local communities should also play a key role in decision-making processes concerning activities that may, in one way or another, impact them. Lastly, access to justice can help restore and remediate damaged environments.

2.4.2.1. Information

Access to information³³³ concerning the environment, including data, is as a prerequisite for public participation and transparent processes (especially regarding transboundary projects). The right to information is enshrined in international legal frameworks, including both human rights and environmental law. This includes, for example, Article 19 of the UDHR³³⁴ and Article 19 of the ICCPR³³⁵. Principle 10 of the Rio Declaration also highlights the importance of access to information with regard to environmental issues. Moreover, rights regarding information may be found in both regional and international environmental treaties. Article 6 of the UNFCCC, for example, states that, “shall promote and facilitate at the national and, as appropriate, sub-regional and regional levels, and in accordance with national laws and regulations, and within their respective capacities, public access to information and public participation.”³³⁶ Additionally, in its Preamble, the UN CBD refers to a lack of information and knowledge concerning biological diversity, further affirming the need for women’s full participation at all levels of policy-making and implementation – a recommendation that the climate change regime should also take into

biodiversity to air and water pollution. And the Convention’s critical focus on involving the public is helping to keep Governments accountable...” In Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 25.

³³³ For more information on the right to environmental information, see: Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 5-6.

³³⁴ Art. 19 of the UDHR states that “everyone has the right to freedom of opinion and expression; that right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.” In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 25.

³³⁵ Art. 19(2) of the ICCPR stipulates that “everyone should have the right to freedom of expression; that right should include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Furthermore, Article 19(3) allows necessary restrictions, as provided by law. This includes: (a) respect for the rights and reputations of others; (b) the protection of national security or of public order, or of public health and morals. Moreover, in 2011, the Human Rights Committee issued a new General Comment further detailing the rights under Article 19 of the CCPR, stating that, regarding access to information, Parties should proactively place government-related information, of public interest, into the public domain. In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 25.

³³⁶ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 27.

consideration. Moreover, the Aarhus Convention³³⁷, in particular, takes a comprehensive approach in recognizing the importance of right to information and public participation. In its Preamble, the Convention states that, “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”³³⁸ In order to do so effectively, citizens “must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and, in that regard, citizens may need assistance in order to exercise their rights.”³³⁹ Furthermore, Article 4 and 5 of the Convention oblige states to collect and disseminate information.³⁴⁰

2.4.2.2. Participation

Public participation is based on the notion individuals and groups may influence decision-making that may impact their basic human rights, communicate important information to affected parties, allow for the inclusion of specialized knowledge (which can be financially valuable in the design and implementation of legal provisions addressing the needs of affected stakeholders), ensure that the environment remains a part of the political and legislative agenda, and encourages intergovernmental drive toward the improvement of international environmental standards. It is critical in ensuring the effectiveness of law, including processes whereby rules emerge, proposed rules become norms, and norms become law. Here, the legitimacy associated with participation – whereby the governed have a voice through representation or deliberation – affects compliance.

Participation may take various forms that include, but are not limited to: lobbying, grassroots action, public speaking, hearings, and consultation. It transforms individuals from subjects and beneficiaries to citizens with rights and responsibilities.³⁴¹ They can empower or systematically exclude marginalized groups, including women and indigenous peoples, reinforcing existing socio-economic contexts and providing a focus where

³³⁷ The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter Aarhus Convention) was signed in Aarhus, Denmark, on 25 June 1998. The Aarhus Convention is only open for signature to member states of the Economic Commission for Europe and those with consultative status to it (art. 17). Article 19 of the Convention further opens the door to accession to other States, based on the condition that the states are members of the UN and accession is approved parties to the Convention.

³³⁸ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 26.

³³⁹ Ibid.

³⁴⁰ Parties are obliged to publish national reports on the state of the environment in three-to-four year intervals. Parties are also required to disseminate legislative and policy documents, treaties and other international instruments relating to the environment. This information must be proactively collected and updated by public authorities. Consequently, states are obligated to establish mandatory systems for obtaining information on proposed and existing activities that could significantly affect the environment. While the Convention also provides for numerous exceptions in Article 4(4) with regard to the duty to inform, these are “to be interpreted in a restrictive way.”

³⁴¹ World Health Organization. (2011) The Social Dimensions of Climate Change (Discussion Draft), 30.

environmental governance has been inadequate.³⁴² It provides opportunities for the convergence of objectives, helps governments save on resources, regulate private actors in avoiding harm during policy implementation, raises the buy-in of parties, and encourage non-state actors to actively support public choices.³⁴³ Participation may foster a greater diversity of innovation in environmental policy-making and management.³⁴⁴ Policies may become more concrete, easily defined, inclusive, transparent, accountable and enforced. This, in turn, increases chances that initiatives will be adopted, appropriately designed, implemented, and sustained. For example, adaptation policies that include community consultations at the beginning of the process may ultimately result in communities identifying related development issues in addition to other motivations for cooperation.³⁴⁵ The recognition and communication of the needs and interests of various participants, thus, improves the quantity and quality of available policy choices.³⁴⁶ As Birnie and Boyle have noted, “[w]hat constitutes sustainable development and an acceptable environment is in the end a matter for each society to determine according to its own value and choices, and within the confines of internationally agreed rules and policies.”³⁴⁷ These include national policy decisions and community-level decisions (related to infrastructure, use of land, housing, etc).³⁴⁸

Similar to the right to information, outlined above, right to public participation is also widely expressed in human rights instruments. Article 21 of the UDHR, Article 20 of the American Declaration and Duties of Man, Article 13 of the African Charter all, in some form or another; affirm the right of everyone to partake in governing his or her country. Moreover, Article 25 of the ICCPR provides that citizens have the right “to take part in the conduct of public affairs, directly or through freely chosen representatives.”³⁴⁹ As stated above, public participation is also guaranteed under Articles 6 and 8 of the Aarhus Convention, where it is required with regard to all decisions (e.g. permitting or

³⁴² The right to public participation ensures that decision-making is the result of a multi-stakeholder process that is equitable, participatory and sensitive to the most vulnerable members of the population and one that builds capacity. Chapman-Russel (2002), 3.

³⁴³ Dellinger, Myanna F. (2012) “Ten Years of the Aarhus Convention: How Procedural Democracy Is Paving the Way for Substantive Change in National and International Environmental Law”, Working Paper Series, 314, access at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2004513 (last accessed: July 20, 2013); Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 31.

³⁴⁴ Andonova, Liliana B. and Mitchell, Ronald. (2010) The Rescaling of Global Environmental Politics (November 2010). Annual Review of Environment and Resources 35, 273.

³⁴⁵ World Health Organization. (2011) The Social Dimensions of Climate Chance (Discussion Draft), 29.

³⁴⁶ Foti, Joseph, and Lalanath Silva. (2008) *Voice and choice opening the door to environmental democracy*. Washington, DC: World Resources Institute, access at: http://pdf.wri.org/voice_and_choice.pdf (last accessed: July 20, 2013); Dellinger, Myanna F. (2012) “Ten Years of the Aarhus Convention: How Procedural Democracy Is Paving the Way for Substantive Change in National and International Environmental Law”, Working Paper Series, 311.

³⁴⁷ In Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press.

³⁴⁸ Dellinger, Myanna F. (2012) “Ten Years of the Aarhus Convention: How Procedural Democracy Is Paving the Way for Substantive Change in National and International Environmental Law”, Working Paper Series, 311-315.

³⁴⁹ World Health Organization. (2011) The Social Dimensions of Climate Chance (Discussion Draft), 31.

³⁴⁹ Selected decisions of the Human Rights Committee under the optional protocol fortieth to forty-sixth sessions (October 1990-October 1992). New York: United Nations, 2004, 42.

renewing permissions for industrial, agricultural, and construction activities according to Art. 6(1)(a)-(b)). Furthermore, the public must be informed of proposed activities and be given time to prepare and participate in decision-making. (Art. 6(2)–(3)). The Convention also calls for public participation in preparing environmental plans, programmes, policies, laws and regulations (Arts. 7). Under Article 10 of the Stockholm Convention, Parties should promote and facilitate public participation. Moreover, Article of the UNFCCC provides that parties “shall promote and facilitate at the national and, as appropriate, sub-regional and regional levels, and in accordance with national laws and regulations, and within their respective capacities, public access to information and public participation.”³⁵⁰

International environmental conventions granting a right to information and public participation, albeit not taking a HRBA, include the 1991 Espoo Convention on Environmental Impact in a Transboundary Context. Instruments granting a direct right to a clean environment at the international level include the 1981 African Charter on Human Rights and Peoples Rights (Article 24³⁵¹) and the 1988 San Salvador protocol on Economic, Social and Cultural Rights to the 1969 American Convention on Human Rights (Article 11³⁵²). Moreover, international agreements granting an indirect right to a clean environment include ILO Convention No. 169, which requires Parties to adopt special measures to safeguard the environment for indigenous peoples. Meanwhile, as noted above, the 1972 Stockholm Declaration³⁵³ and the 1992 Rio Declaration³⁵⁴ “contain language that, although relating to human rights, is couched in general terms and is too vague in relation to the environment itself to be viewed as granting a direct human right to a clean environment.”³⁵⁵ UN treaty bodies, as well as the Inter-American and European courts, “hear complaints about failures to enforce national environmental rights or about environmental degradation that violates one or more of the guaranteed rights in the agreements over which they have jurisdiction.”³⁵⁶ Such jurisprudence is crucial in developing a central framework for decisions regarding projects or policies – to define

³⁵⁰ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 26.

³⁵¹ Article 24 states that: “All peoples shall have the right to a general satisfactory environment favourable to their development”; See Soveroski, M. “Environment Rights versus Environmental Wrongs: Forum over Substance?”, 16 *RECIEL* (2007) 261, 264.

³⁵² Article 11 states that: 1. Everyone shall have the right to live in a healthy environment and to have an access to basic public services; 2. The state parties shall promote the protection, preservation and improvement of the environment. See Soveroski, M. “Environment Rights versus Environmental Wrongs: Forum over Substance?”, 16 *RECIEL* (2007) 261, 264.

³⁵³ Principle 1 introduces language that links environment to the 1948 Universal Declaration of Human Rights, pledging that “a person has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.” In Fitzmaurice, M. (2009) *Contemporary issues in international environmental law*. Cheltenham, UK: Edward Elgar, 176.

³⁵⁴ The Rio Declaration does not grant a direct right to a clean environment, but states that, “[h]uman being are in the centre for sustainable development. They are entitled to a healthy life in harmony with nature.” Fitzmaurice, M. (2009) *Contemporary issues in international environmental law*. Cheltenham, UK: Edward Elgar, 176.

³⁵⁵ Ibid.

³⁵⁶ Several of these rights have already been mentioned with regard to specific regional treaties and cases.

opportunities for further enhancing opportunities. As noted above, these rights include the right to life³⁵⁷, health³⁵⁸, and food³⁵⁹.³⁶⁰

However, while participation has many advantages, several points must be kept in mind: How can one ensure that participation is not only *pro forma* – that stakeholder participation is actually allowed in decision-making – especially if it is often based on temporary and ad-hoc rather than permanent and reliable mechanisms and procedures? In any case, the impact of public participation will differ, even when faithfully implemented, depending on the political context, the environmental issue addressed, the institutional and structural design of the legal system, and the substantive norms being applied.³⁶¹

2.4.2.3. Access to Justice

Access to justice, guaranteeing victims of human rights violations (e.g. the negative implications of climate change on human rights) an effective remedy, is expressed in Article 2(3)a of the ICCPR. Right to remedy includes two aspects: access to justice and substantive redress. Strengthening access to justice, through independent and impartial bodies, helps strengthen other right, thus, reinforcing human rights and environmental protection, as well as promoting actions that alleviate poverty and support sustainable development. Additionally, the ICESCR has noted that persons or groups who are victims of rights violations should have “access to effective judicial or other appropriate remedies at both the national and international levels and should be entitled to adequate reparation.”³⁶²

The answer may actually not lie within expanding claims for international human rights law. International law may, in fact, empower individuals and groups, including

³⁵⁷ The right to life, enshrined in Art. 3 of the UNDHR and Art. 6 of the ICCPR, is non-derogable and foundational. In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 23.

³⁵⁸ According to the ICESCR, the right to health is closely related to and dependent on the realization of other human rights. These include, among others, rights to food, housing, work, education, non-discrimination, equality, access to information. It also embraces “a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extend to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment.” In OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 24.

³⁵⁹ According to the ICESCR, the core of the right to adequate food implies the availability of food in sufficient a quantity and quality (e.g. to satisfy dietary needs, free from adverse substances, etc.)

³⁶⁰ The former Human Rights Commission and the current Human Rights Council consistently recognize that environmental violations “constitute a serious threat to the human rights to life, good health and a sound environment for everyone.” In Commission on Human Rights resolution 2001/35. E-CN_4-RES-2001-35.

³⁶¹ Ebbesson, Joonas. *The Notion of Public Participation in International Environmental Law*, 8 Yearbook of International Environmental Law (1997), 59.

³⁶² OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 28.

marginalized populations, to influence decisions and policies directly. In their work, Birnie and Boyle note two key learnings:

- a) Ensuring the right processes for determining, internally and internationally, rather than defining a vision for a right to the environment is key. As the internationalization of the domestic environment becomes more extensive through various policies, the role of human rights law in democratizing national decision-making processes and making them more rational, open, and legitimate will become more and not less significant. Participatory rights are, thus, crucial.
- b) The amount of attention given to and policies regarding environmental concerns will depend on the national legal system, at hand. Arguments for the protection of the environment as a substantive human right are best addressed in the context of particular societies and their own legal systems.

We need to contend that environmental human rights, when realized as intended, do not only protect individuals against harmful changes in the natural environment, but also work for the environment itself, granting the natural world some degree of protection and the right of existence. The UN CBD may be regarded as a step in the right direction as it recognizes the “intrinsic value of biological diversity” – its values and its components.³⁶³ Furthermore, “the virtue of looking at environmental protection through other human rights, such as life or property, is that it focuses attention on what matters most: the detriment to important, internationally protected values from uncontrolled environmental harm.”³⁶⁴ This avoids having to define the notion of a ‘satisfactory’ or ‘decent’ environment. Furthermore, this leads to the question of whether there is an actual need for a separate, generic right to a ‘decent’, ‘viable’, or ‘satisfactory’ environment in international law or whether international environmental law must be reconceptualized into the international law of environmental rights.³⁶⁵ “The strongest argument in favour of qualitative environmental rights is that other human rights are themselves dependent on adequate environmental quality, and cannot be realized without governmental action to protect the environment.”³⁶⁶ Thus, substantive norms on the contents of the right to a decent environment are arguably needed because mere procedural rights have no meaning if there are no substantial norms upon which to base the use of these rights. Unless there is a substantive right to be protected, procedural law simply cannot be applied. What is needed is a benchmark (e.g. minimum standards upon which people can base their claims when demanding a better environment, etc.) that may be used to guide people when they

³⁶³ Kolari, Tuula. (2004) *The right to a decent environment with special reference to indigenous peoples: research report*. Rovaniemi [Finland]: University of Lapland, Arctic Centre, Northern Institute for Environmental and Minority Law, 14.

³⁶⁴ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 266.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

are utilizing their procedural environmental rights. Participatory instruments cannot replace norms providing fundamental substantive entitlements.³⁶⁷

2.5. Indigenous Peoples Rights in International Law

“Indigenous peoples are among the most marginalized and impoverished in the world. In many cases, not only their physical well-being is at stake, but the survival as peoples with their own culture, identity, livelihood and governance systems. The denial of their individual and collective rights is the main cause of their marginalized and vulnerable status, thus in working with indigenous peoples, a rights-based approach is indispensable and the only feasible way to address their challenges.”

-Kathrin Wessendorf, IWGIA

2.5.1. Indigenous Peoples and Climate Change

The implications of climate change on all individuals, including over 300 million indigenous peoples³⁶⁸ worldwide, amplify existing and lead to novel vulnerabilities.³⁶⁹ According to the 4th Assessment Report of the IPCC, there is “strong evidence of the ongoing impacts of climate change on... communities,” and that “[w]arming and thawing of permafrost will bring detrimental impacts on community infrastructure.”³⁷⁰ With regard to indigenous peoples, climate change has far-reaching, albeit differing, implications – from Arctic indigenous peoples, the Yanomami of the Amazonian Rainforest, and Pacific Island Nations to indigenous mountain communities in Nepal, Aboriginal and Torres Strait Islander communities in Australia, and indigenous peoples in Kenya.³⁷¹ Although they

³⁶⁷ Ebbesson, Joonas. *Information, Participation and Access to Justice: The Model of the Aarhus Convention*, A Background Paper No. 5 of the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment (2002), 5.

³⁶⁸ The term indigenous peoples, as used in this report, covers diverse indigenous groups who exhibit some commonalities, such as unique legal and spiritual connections to the environment. Indigenous peoples are defined as non-dominant groups descending from populations inhabiting certain areas prior to the time of conquest, colonization, or the establishment of present state borders. These groups identify as being indigenous, retain some social, economic, cultural, and political institution, and maintain relations to their land and environment. Furthermore, “historic legacies and [the] current positioning of indigeneity have [a] bearing on climate change vulnerability, adaptation options, and empowerment. ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, 27 June 1989, art 1; AHDR. (2004) Arctic Human Development Report, Akureyri: Stefansson Arctic Institute, 21.

³⁶⁹ In 1990, the UN noted that indigenous peoples are “victims of environmental degradation and protectors of vulnerable ecosystems.” Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 1.; For example, IUCN Indigenous Peoples and Climate Change/REDD: AN Overview of Current Discussions and Main Issues (2010) 5, access at: http://cmsdata.iucn.org/downloads/iucn_briefing_ips_and_redd_march_2010.pdf (last accessed: 30 March 2013); Kolari, Tuula. (2004) “The Right to a Decent Environment with Special Reference to Indigenous Peoples”, *Juridica Lapponica* 31, 22.

³⁷⁰ Knox, John H. (2009) Linking Human Rights and Climate Change at the United Nations. *Harvard Environmental Law Review* 33, 488.

³⁷¹ The Yanomami are currently experiencing less rain, severe droughts and higher temperatures, which have resulted in vegetation loss. Consequently, land that was originally used for cattle and goat farming is no longer viable for traditional use. Meanwhile, as noted earlier, climate change is causing indigenous peoples in the Arctic to lose land and natural resources crucial to their livelihoods. Survival International, *The Most Inconvenient Trust of All, climate Change and Indigenous People* 1 (2009), 3. access at: http://assets.survivalinternational.org/documents/132/survival_climate_change_report_english.pdf (last access:

vary substantially, even within the same state, commonalities exist in indigenous groups' experience of climate change consequences to their lands and traditional livelihoods. For example, both indigenous peoples in the Arctic and in low-lying coastal states are facing changes in biodiversity, thus, threatening their food security.³⁷² Consequently, "[s]ubstantial investments will be necessary to adapt or relocate physical structures and communities."³⁷³

Climate change disproportionately burdens indigenous peoples, making them both physically and legally vulnerable to its effects. This is, for example, visible with regard to Arctic indigenous peoples, like the Inuit, who are "now being severely tested"³⁷⁴ and whose fundamentally nature-based way of life is altered due to climate change, thus, making this a crucial human rights issue.³⁷⁵ While indigenous peoples have been traditionally adaptive and resilient, and have contributed least to climate change, the current pace of change resulting from climate change is beyond indigenous adaptive capacity, which is already "undermined by social pressures."³⁷⁶ Moreover, they are likely to be the first and most affected, have little leverage at negotiating tables in comparison to major actors and emitters, are least likely to be the beneficiaries of complex climate funding, and are often improperly consulted during project implementation.³⁷⁷ On-going

29 March 2013); "Global Warming Solutions are Hurting Indigenous People, Says U.N.", mongabay.com, (2 April 2008), http://news.mongabay.com/2008/0402-redd_indigenous_people.html (last visited: 29 March 2013); For an overview of potential climate change implications, see M.L. Parry et al. (eds), 'Intergovernmental Panel on Climate Change, Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change', 7-22 (2007): http://www.ipcc.ch/publications_and_data/ar4/wg2/en/contents.html (last visited 29 March 2013); Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) "Climate Change and Human Rights" in Climate Change and the Law, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 301.

³⁷² International Expert Group Meeting on Indigenous Peoples and Climate Change, 2 http://www.un.org/esa/socdev/unpfii/documents/E_C19_2008_CRP_9.doc (last accessed 29 March 2013); Parker, Alan, et al (eds). *Climate Change and Pacific Rim Indigenous Nations, Executive Summary* 23 (2006), available at <http://academic.evergreen.edu/g/grossmaz/IndigClimate2.pdf> (last visited: 29 March 2013).

³⁷³ Knox, John H. (2009) Linking Human Rights and Climate Change at the United Nations. *Harvard Environmental Law Review* 33, 488-489.

³⁷⁴ Ibid.

³⁷⁵ Some have been forced to relocate after flooding. Survival International, *The Most Inconvenient Trust of All, climate Change and Indigenous People* 1 (2009), 3; Climate change has affected their rights and interests, especially with regard to cultural rights and their right to freely dispose of natural resources. In Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 18; Ansari, Azadeh, "'Climate Change' Forces Eskimos to Abandon Village", 28 April 2009: <http://edition.cnn.com/2009/TECH/science/04/24/climate.change.eskimos/index.html>; Meanwhile, reindeer herders have reported declining animal populations because they find it increasingly difficult to access food. International Arctic Science Committee, *The Saami Community of Lovozero Climate Change Study Case*, Arctic Climate Impact Assessment §3.4.9 (2010), access at: http://www.eoearth.org/article/Kola:_the_Saami_community_of_Lovozero_climate_change_case_study. (last access: 29 March 2013); Nuttall, Mark et al., *Hunting, Herding, Fishing, and Gathering: Indigenous Peoples and Renewable Resource Use in the Arctic*, Arctic Climate Impact Assessment – Scientific Reports (2006); Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) "Climate Change and Human Rights" in Climate Change and the Law, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 301.

³⁷⁶ Koivurova, Timo, Adam Stepien, Anna Gremserperger, and Henna Niemi (forthcoming in 2013) "Arctic Indigenous Peoples and the Challenge of Climate Change" in *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*, Krämer and Cavalieri (eds.); ILO (International Labor Organization). (1989)

³⁷⁷ Cameron, E. (2011) Development, climate change and human rights: From the Margins to the Mainstream? Social Development Working Paper 123, World Bank, Washington DC, 8.

dispossession, marginalisation, acculturation and discrimination are amplified by changing environmental conditions. Additionally, a rise in negative developments and inter-group conflict may be expected when climate stressors exacerbate already existing social, economic and political factors. Therefore, climate change, at its most catastrophic level, includes the total destruction of an indigenous community's identity and distinct way of life.³⁷⁸ The loss of their ability to continue their livelihood and disappearance, as a whole, would thus be a loss to society, especially as indigenous communities are considered to be repositories of traditional knowledge and skills on how to manage complex ecological systems in a sustainable manner (e.g. multiple species management, resource rotation).³⁷⁹

³⁸⁰ While the use of indigenous ecological knowledge (IEK) has been legitimated across various disciplines, the discourse on law and adaptive governance has given little focus to the issue.³⁸¹

Despite some positive impacts, accumulating drivers of change may trigger negative outcomes when the pace of change becomes overwhelming and unsustainable.³⁸² Mitigation and adaptation projects may have numerous adverse effects on indigenous livelihoods and rights. For example, projects aiming at the protection of forests may, in fact, adversely impact indigenous peoples' access to lands, resources, and the manner in which traditional activities are conducted. Likewise, various infrastructural undertakings aiming toward climate change adaptation may encroach on indigenous lands and significantly affect the ecosystems on which they depend. Consequently, the genuine participation of indigenous communities may be regarded as the only manner in which to minimize negative implications (especially in preventing human rights violations) and maximize positive outcomes in line with indigenous communities' interests and values. However, actors must also remember that communities may, at times, choose development over traditional livelihoods or, alternatively, aim to combine both, resulting in diverse trade-offs.

International Frameworks: A Broad Overview

Due to the impacts that environmental degradation may have on indigenous peoples, a significant body of law surrounding indigenous peoples, human rights, and environmental

³⁷⁸ Miranda, Lillian Aponte, "Introduction to indigenous peoples' status and rights under international human rights law" in " in Randall S. Abate and Elizabeth Ann Kronk, *Climate Change and Indigenous Peoples: The Search for Legal Remedies* (2013) Edward Elgar Publishing, 39.

³⁷⁹ Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 10-11.

³⁸⁰ The UNFCCC has highlighted the preservation of indigenous knowledge as an important element in determining adaptation options (e.g. gender-specific vulnerability assessments, community-level responses, coping strategies). *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 16.

³⁸¹ See Sandra Styres et al, "Walking in Two Worlds: Engaging the Space Between Indigenous Community and Academia", 33 Can. J. of Ed. 617, 619 (2010).

³⁸² Some territories, used and occupied by indigenous peoples, have become sources of hydroelectric power, minerals, hardwoods, and pasture lands, others are threatened or lost due to climate change. OHCHR and UNEP. (2012) "Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP" (Background Document), OHCHR-UNEP Joint Side Event, "Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1", United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 28.

degradation has developed.³⁸³ This, in itself, serves as a good example of how law has developed to “integrate human rights and the value of environment to certain people.”³⁸⁴ Furthermore, as will be outlined later in this section, cases like the *Saramaka* case, not only recognize how ones’ environment may affect economic well-being, but also that indigenous peoples’ rights must be strengthened and included in policies on sustainable development. However, “[a] human rights approach to climate change has, in a manner of speaking, always been a component of the dialogue on climate change by indigenous peoples, but has only in recent years been recognized as such by governments, universities, civil society and industry.”³⁸⁵ Indigenous peoples stress their legal and human rights on all manners of environmental issues, and issues related to their use of land, water, and natural resource. As Fenge notes:

*...from an indigenous perspective which operates from an overtly ecological, all-things-are-connected point of view, climate change is only the most recent issue to which they have to respond, and is very much a continuation of environmental issues that have attracted their attention for decades...Defending their rights and interests has always had a legal and human rights angle. In short, while the language of human rights very much postdates the second world war, the same concepts that inform the doctrine of human rights – equity, fairness, enjoyment of property, etc. have been at play for Indigenous peoples since 1492!*³⁸⁶

However, it must be noted that there is both normative potential and discrepancy in using present human rights law and international environmental law as they relate to indigenous peoples and the environment. This is, in part, because of indigenous peoples’ close connection to land and natural resources, which led to extensive development regarding indigenous peoples’ status. This includes their traditional nature-based livelihoods (e.g. hunting, fishing, gathering, and reindeer herding), which have effectively linked culture and livelihood to the protection of biodiversity.³⁸⁷ As interference with indigenous peoples’ land (e.g. changes resulting from climate-change) may lead to communities’ inability to properly enjoy their human rights, including indigenous peoples’ right to culture under international law.³⁸⁸ Thus, as “climate change impacts are increasingly presented as an issue of human rights,” international law can help indigenous communities protect themselves against the disproportionate impacts of climate change, utilizing human rights as a “transformative socio-political strategy, altering the

³⁸³ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 28.

³⁸⁴ Ibid.

³⁸⁵ Stakeholder consultation with Terry Fenge. Interview with the authors.

³⁸⁶ Fenge continues by noting: “Look at the language of historic treaties between Indigenous peoples and the Crown particularly since the Royal Proclamation of 1763 to get a sense of the promises made to Indigenous people supposedly enabling them to maintain access to the land and wildlife, now threatened by climate change.” In Stakeholder consultation with Terry Fenge. Interview with the authors.

³⁸⁷ Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 1 and 46.

³⁸⁸ Ibid 3, 35.

vocabularies, expertise and sensibilities of those working on climate change and development.”³⁸⁹ This gives indigenous peoples the opportunity “to shape analysis, process, instrument design and substantive outcomes”, draw attention to climate change effects on “particular communities, highlight the particular causes of their vulnerability” and trigger a more effective response from those capable and responsible to act.³⁹⁰

To date, various developments have signaled a change of indigenous peoples’ legal personality with the aim of protecting their collective existence and institutions.³⁹¹ The Rio Conference on Sustainable Development (1992) successfully shifted the role of indigenous peoples from objects of protection to subjects of co-operation. This served as a launch pad for indigenous peoples to play a more active role in legal and political processes concerning sustainable development.³⁹² While the Rio +20 process, twenty years later, was relatively weak with regard to the use of human rights language, indigenous peoples’ active involvement led to the inclusion of numerous key concerns and issues in the outcome document. These include a reference to UNDRIP, as well as the recognition of indigenous peoples’ contribution to sustainable development, a positive result that provides a foundation to build on.³⁹³ Cooperative policies, based on collaborative research and local engagement, are thus regarded as legitimate.³⁹⁴ This goes in line with the notion that indigenous peoples must be viewed as agents of change – where their ability to influence the design and implementation of international environmental policies and law is important³⁹⁵ – as opposed re-introducing notions of paternalism and trusteeship, that must be applied with caution.³⁹⁷ Cultural and environmental integrity, go hand-in-hand in

³⁸⁹ Cameron, Edward. (2011) "Development, Climate Change, and Human Rights: From Margins to Mainstream" *Social Development Papers: Social Dimensions of Climate Change* No. 123, iv; Koivurova, Timo, Adam Stepien, Anna Gremesberger, and Henna Niemi (forthcoming in 2013) "Arctic Indigenous Peoples and the Challenge of Climate Change" in *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*, Krämer and Cavalieri (eds.); In Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press.

³⁹⁰ Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development, 3-4.

³⁹¹ Heinämäki notes that it may be argued that environmental protection and the deterrence of environmental harm falls under state obligation. Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 27.

³⁹² Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 11.

³⁹³ See the chapter on Green Economy and in the Framework for Action (§58j and §109 respectively); Stakeholder consultation with Kathrin Wessendorf. Interview with the author.

³⁹⁴ Koivurova, Timo, Adam Stepien, Anna Gremesberger, and Henna Niemi (forthcoming in 2013) "Arctic Indigenous Peoples and the Challenge of Climate Change" in *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*, Krämer and Cavalieri (eds.); Hovelsrud, GK and B Smit (eds) (2010), *Community Adaptation and vulnerability in Arctic Regions*. Berlin: Springer.; ACIA. (2005) Arctic Climate Impact Assessment: Impacts of a Warming Arctic, Cambridge University Press; Ford, JD, T Pearce, F Duerden, C Furgal, and B Smit. (2010) "Climate change policy responses for Canada's Inuit Population: The importance of and opportunities for adaptation", *Global Environmental Change* 20, 668-680.

³⁹⁵ Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 46 and 78.

³⁹⁶ Ibid.

³⁹⁷ Bravo 2009; Pearce, T, JD Ford, A Caron, and BP Kudlak (2012), "Climate Change adaptation planning in remote, resource-dependent communities: an Arctic example", *Regional Environmental Change*.; Cameron, E.S. (2012) "Securing Indigenous politics: A critique of the vulnerability and adaptation approach to the human dimensions of climate change in the Canadian Arctic", *Global Environmental Change*, 22, 201-114.

how international environmental policies, including indigenous peoples integral right to culture, are integrated.³⁹⁸ It is crucial that indigenous peoples be fully informed of the consequences of the use and exploitation of natural resources in their lands and territories through consultations, under *the principle of free, prior and informed consent*, with [the] indigenous peoples concerned. Through free, prior and informed consent, future conflicts can be avoided and the full participation of indigenous peoples in consultation mechanisms, environmental impact assessment and socio-cultural impact assessments can be ensured (emphasis added).³⁹⁹ For example, the Saami are increasingly utilizing an approach based on cooperation and collaboration in discussions on climate and environmental degradation.⁴⁰⁰ Nonetheless, some international processes have been regarded as counterintuitive in many regards. For example, Sheila Watt-Cloutier has noted:

*I have attended three COPs. People rush from meeting to meeting arguing about all sorts of narrow technical points. The bigger pictures, the cultural picture, the human picture is being lost. Climate Change is not about bureaucrats scurrying around. It is about families, parents, children, and the lives we lead in our communities in the broader environment. We have to regain this perspective if climate change is to be stopped. Inuit understand these connections because we remain people of the land, ice, and snow. This is why, for us, climate change is an issue of our right to exist as an Indigenous peoples. How can we stand for ourselves and help others do the same?*⁴⁰¹

This highlights the notion that participatory efforts must serve a clear and relevant purpose throughout decision-making processes. Otherwise, they risk becoming purely formal acts that result in disappointment.⁴⁰² Co-management and participatory decision-making can, however, be empowering if they are “tailor-made to communities’ individual capacities, and perpetually re-evaluated and attuned to changing conditions.”⁴⁰³

Mitigation and adaptation measures particularly impact indigenous peoples. Consequently, over the past few years, indigenous peoples have focused their efforts on capacity building so as to be an international player in policy development, contributing to mitigation and adaptation measures with traditional knowledge and experience in managing natural resources, at international negotiations and national process. However, an inherent limitation to present international law, especially for indigenous peoples, is their role in international decision-making in an environmental context.⁴⁰⁴ Indigenous

³⁹⁸ (Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 3.

³⁹⁹ Ibid para. 21.

⁴⁰⁰ Indigenous Peoples and Climate Change, 302.

⁴⁰¹ Watt-Cloutier, Sheila, Chair, “Presentation at the Inuit Circumpolar Conference Eleventh Conference of Parties to the UN Framework on Climate Change Montreal” (7 December 2005), available at <http://www.inuitcircumpolar.com/index.php?ID=318&Lang=En> (last accessed: 30 March 2013).

⁴⁰² Koivurova, Timo, Adam Stepien, Anna Gremesberger, and Henna Niemi (forthcoming in 2013) “Arctic Indigenous Peoples and the Challenge of Climate Change” in *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*, Krämer and Cavalieri (eds.).

⁴⁰³ Ibid.

⁴⁰⁴ Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 207.

peoples are often categorized as NGOs alongside other groups participating in the international policy-making process. Such a binary structure of representation leads to a situation where indigenous peoples are placed on the same level as industry and environmental associations.⁴⁰⁵ Furthermore, unlike minorities who aim for political participation in a community of which they form a part, indigenous peoples attach great importance to collective rights and the opportunity to make their own decisions regarding issues that are important to them.⁴⁰⁶ Consequently indigenous peoples' procedural rights exceed the general status of minorities in international law – a fact that is to be highlighted throughout this report.

2.5.2. A Paradigm shift in Indigenous Peoples' Rights Discourse

Over the past few years, profound developments have taken place with regard to indigenous peoples' international status and rights. Although a change in relations between the state and indigenous peoples has not always found its implementation at the national level, it may be convincingly argued that a fundamental shift – culminating in the adoption of the UN Declaration on the Rights of Indigenous Peoples⁴⁰⁷ (UNDRIP) and at its endorsement of the concept of free, prior and informed consent (FPIC) – has occurred. This section takes an analytical approach toward the concept of FPIC and will focus on multiple important developments that have both prepared and pushed states to slowly accept that indigenous peoples cannot be regarded as objects of protection, but must be recognized as serious actors or “partners” in decision-making.

A key development connected to the International Decade on the World's Indigenous People (1995-2004)⁴⁰⁸ was the establishment of the Permanent Forum on Indigenous Issues (UNPFII) within the UN Economic and Social Council (UN ECOSOC), which met in May 2002 for the first time.⁴⁰⁹ The new Forum marked a fundamental milestone in the indigenous struggle to gain a position within the international community and indicated the strengthened status of indigenous peoples in international law. Operating at the highest possible level within the UN system, the new body was unique in several

⁴⁰⁵ Ibid 223.

⁴⁰⁶ It is important to note that there are differences between protecting indigenous and minority rights. This is particularly important when designing standards, monitoring systems, and institutions. According to Alfredsson, indigenous rights involve not only equal rights and non-discrimination but also include special elements, such as the possession of land and benefits from natural resources. In Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. *Acta Universitatis Lapponiensis* 180, 4-5.

⁴⁰⁷ The United Nations Declaration on the Rights of Indigenous Peoples, 7 September 2007, Sixty-first Session, A/61/L.67.

⁴⁰⁸ The International Decade of the World's Indigenous People (1995-2004) was proclaimed by the General Assembly in its resolution 48/163 of 21 December 1993 with the main objective of strengthening international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health. The theme for the Decade is "Indigenous people: partnership in action".

⁴⁰⁹ ECOSOC Res. E/RES/2000/22 (July 28, 2000) establishing the Permanent Forum; Report of the First Session of the Permanent Forum on Indigenous Issues, U.N. Doc. E/2002/42/Supp. 43 (Wilton Littlechild, Rapporteur).

ways, perhaps most importantly in the parity of its composition.⁴¹⁰ Additionally, it has been estimated that the Forum's broad mandate – in fact, all mandate areas of ECOSOC are broad – provides a holistic approach to indigenous issues, previously lacking in the UN system, while seeking to guarantee that all UN bodies take the particular needs and concerns of indigenous peoples into account across all activities.⁴¹¹

At its first three sessions, the UNPFII identified the application of FPIC as a major methodological challenge and, by the third session, the body had recommended a workshop on FPIC – with a key focus on FPIC in relation to the UN CBD – that was authorized by the ECOSOC in decision 2004/287.⁴¹² Issues pertaining to indigenous peoples' lands and environment have also become increasingly visible as the work of the Permanent Forum has developed over. At its Sixth Session (2007), the Forum focused on a special theme – the protection of indigenous peoples' territories, lands and natural resources – where the Permanent Forum highlighted the ultimate importance of indigenous peoples' ability to control their lands, stating:⁴¹³

*It is crucial that indigenous peoples be fully informed of the consequences of the use and exploitation of natural resources in their lands and territories through consultations, under the principle of free, prior and informed consent, with [the] indigenous peoples concerned.*⁴¹⁴

At the sixth session, the UNPFII also appointed special rapporteurs to prepare a report on the impact of climate change mitigation measures on indigenous peoples. The Report's recommendations highlight the importance of indigenous peoples' meaningful participation; with a special reference to the Arctic, stating that United Nations Member States and agencies should designate the Arctic region as a special climate change focal point due to its particular vulnerability.⁴¹⁵

Arctic indigenous peoples' organizations – especially the ICC and the Saami Council, which form the Arctic Caucus – have had strong visibility and have actively participated in the work of the Permanent Forum.⁴¹⁶ At its Seventh Session (2008), where

⁴¹⁰The Forum is made up of 16 experts, 8 nominated by governments and the other 8 by indigenous organizations. Ibid para. 25.

⁴¹¹Magga, O.H., Presentation by the Chairperson of the Permanent Forum on Indigenous Issues, The UN Permanent Forum on Indigenous Issues – Ambitions and Limitations, Seminar, September 1st, 2003, Resource Centre for the Rights of Indigenous Peoples, Guovdageaidnu, access at: <http://www.galdu.org/web/index.php?artihkkal=39&giella1=eng> (last accessed: 1 January 2009).

⁴¹²International Workshop on free, prior and informed consent and indigenous peoples (New York, 17-19 January 2005), PFII/2005/WS. 2/3: Contribution of the Convention on Biological Diversity and the Principle of Prior and Informed Consent, Secretariat of the Convention on Biological Diversity.

⁴¹³Permanent Forum on Indigenous Issues, Report on the Sixth Session 14-25 May 2007, Economic and Social Council Official Records Supplement No. 23, UN, New York, 2007, E/2007/43/E/C.19/2007/12.

⁴¹⁴Ibid para. 21.

⁴¹⁵Tauli-Corpuz, V. & Lynge A. (2008). Impact of climate change mitigation measures on indigenous peoples and on their territories and lands [submission by UNPFII members]. Seventh session of the United Nations Permanent Forum on Indigenous Issues, New York, 21 April – 2 May 2008. E/C.19/2008/10. Access at: http://www.un.org/esa/socdev/unpfii/en/session_seventh.html#Documents (last access 23 May 2008).

⁴¹⁶The visibility and participation of the Saami was particularly strong as the Permanent Forum's first chair was a Saami, Ole-Henrik Magga. Lindroth, M. (2006). Indigenous-state relations in the UN: establishing the indigenous forum. *Polar Record*, 42, 222, 239-248, at 246.

climate change served as the special theme, the Caucus recommended that the UNFCCC specifically develop and reserve a seat for indigenous peoples at the negotiating table; a suggestion similar to the Arctic Council's model of permanent participation, where indigenous peoples' representatives may participate at a level where decisions are being made. This would, in turn, provide them with direct access to decision-makers and would give them the opportunity to constructively offer their knowledge.⁴¹⁷

An important target of the Permanent Forum has been the push for the adoption of the UNDRIP.⁴¹⁸ The UN Declaration indicates a historical shift in relation to the legal status of indigenous peoples and the recognition of their rights in international law. Although the final decision was carried out in line with the general practice of international law, recognizing only states as parties to the instrument, it can be said that indigenous peoples' participation in the drafting process of the actual text, with a voice equal to governments, was the first instance where indigenous peoples took part in making international law in a global context.⁴¹⁹ In this regard, the former Chair of the UNPFII, Victoria Tauli-Corpuz, expressed her view concerning the significance of the Declaration by stating:

*The 13th of September 2007 will be remembered as a day when the United Nations and its Member States, together with indigenous peoples, reconciled with past painful histories and decided to march into the future on the path of human rights.*⁴²⁰

In addition to the principles of self-development and cultural integrity, adopted in ILO Convention No. 169, the Declaration celebrates a paradigm shift: not only does it explicitly recognise indigenous peoples' right to self-determination and self-governance, but it also advances the concept of FPIC in relation to decision-making concerning natural resources. It was precisely these established rights that led a few key countries – Australia, Canada, New Zealand and the United States – to vote against the Declaration at the General Assembly at first.⁴²¹ However, they eventually endorsed the Declaration.

Although the UNDRIP is not a legally binding instrument, human rights monitoring bodies have already started to apply it as a legal source and countries, such as

⁴¹⁷ Ibid., Item 1; United Nations Permanent Forum on Indigenous Issues (UNPFII). *Statement by the Arctic Caucus – Inuit Circumpolar Council and the Saami Council* [Presented by Patricia Cochran, Chair, Inuit Circumpolar Council, Seventh Session, New York, 21 April to 2 May 2008]. Access at: <http://www.docip.org/Online-Documentation.32.0.html?&L=0> (last access 2 June 2008).

⁴¹⁸ The United Nations Declaration on the Rights of Indigenous Peoples, 7 September 2007, Sixty-first Session, A/61/L.67.

⁴¹⁹ See Davis, M., 'Indigenous Struggle in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples', *Melbourne Journal of International Law*, Vol. 9, No. 2 (2008): 1-33, at 2. See also, generally, Barsh, R.L., 'Indigenous Peoples and the UN Commission on Human Rights: A Case of the Immovable Object and the Irresistible Force', 18 *Human Rights Quarterly* (1996): 782-813.

⁴²⁰ The UN Declaration was adopted by the UN Human Rights Council on 29 June 2006 and by the UN General Assembly on September 13th 2007. Tauli-Corpuz, V., *The Declaration on the Rights of Indigenous Peoples: A major victory and challenge* (2007), at 1. Access at: <http://www.twinside.org.sg/title2/resurgence/206/cover1.doc> (last accessed 10 November 2008).

⁴²¹ Tauli-Corpuz, V. (2007), at 2.

Bolivia, have adopted the UNDRIP as national law.⁴²² Furthermore, the Supreme Court of Belize has, for instance, applied the principles of UNDRIP as a framework for determining land rights. Shortly after the adoption of the Declaration by the UN General Assembly, the Supreme Court of Belize made a decision relating to the rights of the Maya community to their lands and resources, applying the Declaration.⁴²³ Today, indigenous peoples are working toward implementing the Declaration. Work on indigenous peoples' issues – including how the Declaration should be implemented by the UN and its agencies, as well how the implementation of the Declaration by Member States can be assessed – is currently being undertaken by the UNPFII.⁴²⁴

2.5.3. On Indigenous Peoples' Right to Self-Determination

Indigenous peoples have persistently pushed for the acceptance of their right to self-determination. The current UN Special Rapporteur on indigenous peoples, Prof. James Anaya, has emphasized that indigenous peoples' right to self-determination is a foundational right without which other human rights cannot be realized.⁴²⁵ However, the right to self-determination has been contentious in international law with two basic questions leading to conflicted views: 1) What should be considered as “peoples”: is it the whole population of a state or may a state consist of several peoples?; and 2) In the latter case, would such peoples have the right to decide their state affiliation (external self-determination)?⁴²⁶

⁴²² It should also be noted that that Bolivia was the first country to adopt the UNDRIP as national law. National Law 3760, which is an exact copy of the UN Declaration, was passed on November 7, 2007. Access at: <http://www.iwgia.org/sw18043.as> (last accessed: 4 July 2009).

⁴²³ *Aurelio Cal v. Attorney-General of Belize Claim* 121/2007, 18 October 2007, Supreme Court of Belize, access at: <http://www.elaw.org/node/1620> (last accessed: 4 January 2009).

⁴²⁴ See International expert group meeting on the role of the United Nations Permanent Forum on Indigenous Issues in the implementation of Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples, 14-16 January, New York, United Nations Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues, PFII/2009/EGM1/15, Access at: http://www.un.org/esa/socdev/unpfii/documents/EGM_Art_42_FAO.doc (last accessed: 5 July 2009).

⁴²⁵ UN Human Rights Council. (2009) Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya, UN Doc A/HRC/12/34 (2009).

⁴²⁶ Ulfstein, Geir, *Indigenous Peoples' Right to Land*, Max Planck UNYB 8 (2004): 1-47, at 4. An extensive research exists on self-determination in international law. See generally J Anaya, *Indigenous Peoples in International Law*, 2nd edn (Oxford, Oxford University Press, 2004); E-IA Daes, 'The Right of Indigenous Peoples to "Self-Determination" in the Contemporary World Order' in D Clark and R Williamson (eds), *Self-Determination: International Perspectives* (Houndmills, MacMillan Press, 1996) 47; M Davis, 'Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples' (2008) 9 *Melbourne Journal of International Law* 1; T Koivurova, 'From high hopes to disillusionment: Indigenous peoples' struggle to (re)gain their right to self-determination' (2008) 15 *International Journal on Minority and Group Rights* 1; T Koivurova, 'Alkuperäiskansojen itsemääräämisoikeus kansainvälisessä oikeudessa' ['The right of selfdetermination of indigenous peoples in international law'] in M Aarto and M Vartiainen (eds), *Oikeus kansainvälisessä maailmassa [Law in a changing world]* (Edita Publishing Oy, Lapin yliopiston oikeustieteiden tiedekunta (Faculty of Law at the University of Lapland), 2008) 249; LS Vars, *The Sámi People's Right to Self-determination* (University of Tromsø, 2009); GS Alfredsson, 'The Greenlanders and their human rights choices' in M Bergsmo (ed), *Human Rights and Criminal Justice for the Downtrodden* (Leiden, Martinus Nijhoff Publishers, 2003) 453; GS Alfredsson, 'Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law' in N Ghanema and A Xanthaki (eds),

The Government and the Supreme Court of Canada, for instance, have accepted that, although “self-determination” or “peoples” are concepts traditionally linked to the right of colonized peoples to statehood, according to present international state practice, there may be different “peoples” living in one state, such as indigenous peoples or the people of Quebec, who have the right to self-determination “which respects the political, constitutional and territorial integrity of democratic states.”⁴²⁷ Furthermore, in relation to the discussion on self-determination, a Committee that was established by the Ministry of Justice of Finland to evaluate the relationship between the Draft Nordic Saami Convention and the Finnish Constitution and other legislation has noted that, while the Finnish Constitution recognizes the Sami as an indigenous people, the recognition of Sami as a people in international law would contradict the Finnish Constitution. The Committee has also noted that the concept of a people, under the Constitution means the total population of which the Sami people are a part of.⁴²⁸ This interpretation is surprisingly traditional, taking into account that Finland has been a strong supporter of the UN Declaration. In this regard, **Finland should promote indigenous peoples’ contemporary right to self-determination that clearly does not give indigenous peoples a right to secession, but guarantees their right to self-government and a meaningful and strong decision-making. Therefore, this report urges Finland to proceed with the negotiation of the Draft Nordic Saami Convention and endorse the right of Saami to self-determination.**

The right to self-determination, as understood in the UN Declaration, does not seem to give the freedom to determine political status, albeit declaring it, while strongly protecting the integrity of sovereign states.⁴²⁹ Fitzmaurice states that “the definition of self-determination in the Declaration is considered to be a compromise between the aspirations of indigenous peoples and the reluctance of States to grant a broadly understood right to self-determination.”⁴³⁰ Thus, according to the UN Declaration, self-determination does not entail the right to secession. On the other hand, it may be argued that, the Declaration recognizes indigenous peoples as “peoples” who should enjoy the rights of peoples under international law.⁴³¹ Furthermore, it has been noted that, although the right to self-

Minorities, Peoples and Self-Determination (Leiden, Martinus Nijhoff Publishers, 2005) 163; M Åhren, *The Saami traditional dress and beauty pageants: Indigenous peoples’ rights of ownership and self-determination over their cultures*, Avhandling leverert for graden Philosophiae Doctor I rettsvitenskap (Thesis supplied for the degree of Philosophiae Doctor of Law) (2010) (unpublished).

⁴²⁷ UN Doc/E/CN.4/1997/102, para 332. See also the Report of the 1999 Session, E/CN.4/2000/84, para 50. See *Reference Re Secession of Quebec*, 20 August 1998, Reprinted in (1998) 37 *International Legal Materials* 1340, 1373.

⁴²⁸ Inter-Ministerial Committee statements in Finland, Sweden and Norway, as translated by the Nordic representatives to the Indigenous (on file with the author), 17–18.

⁴²⁹ As stated by Daes, ‘The principle of self-determination as discussed within the Working Group and as reflected in the draft declaration was used in its internal character, that is short of any implications which might encourage the formation of independent States.’ See UN Doc. E/CN.4/Sub2AC.4/1992/3 Add. 1, p. 5 (1992). See Article 46 of the UN Declaration on the Rights of Indigenous Peoples, which explicitly protects the territorial integrity of states.

⁴³⁰ Fitzmaurice M. (2009) *The New Developments Regarding the Saami Peoples of the North*, *Journal on Minority and Group Rights* 16, 67-156, 151.

⁴³¹ Koivurova, T. ‘Alkuperäiskansojen itsemääräämisoikeuskansainvälisessä oikeudessa’ [The right of self-determination of indigenous peoples in international law] in M. Aarto and M. Vartiainen, *Oikeuskansainvälisessä maailmassa* [Law in a changing world], Edita Publishing Oy, Lapin yliopiston oikeustieteiden tiedekunta [University of Lapland, Faculty of Law] (2008), pp. 249-269, at 268.

determination does not amount to the right of a part of a population to secede from an existing state in a non-colonial territory, there may be exceptional circumstances whereby a group may have a legally and politically tenable right to secede due its demonstrable inability to achieve the established rights of self-determination, as guaranteed by law.⁴³²

The International Law Association (ILA) Interim Report on the UN Declaration has recently elaborated on the meaning of indigenous peoples' right to self-determination.⁴³³ The ILA notes that, for indigenous peoples, the "intrinsic value of political participation lies in its ability to give expression to the individual and collective aspects of self-determination."⁴³⁴ As noted by ILA, many scholars, governments and indigenous peoples assert that when taken together, Articles 3 and 46 para. 1 of the UN Declaration recognize a right to self-determination for indigenous peoples that differs from the right to self-determination held by non-self-governing peoples living under colonial domination. According to this view, the UN Declaration confirms that indigenous peoples have an international legal right to a unique "contemporary" form of self-determination, giving them the right to engage in "belated nation-building", to negotiate with others within their State, to exercise control over their lands and resources, and to operate autonomously.⁴³⁵ According to the ILA, rights of autonomy or self-government, thus find expression in participation and/or consultation in state law- and decision-making. In relation to indigenous peoples, these rights are to be understood in three contexts:

1. Indigenous peoples' ability to influence law- and decision-making processes of the state; the chance of being devolved the exercise of State legislative and administrative functions concerning their internal affairs;
2. State recognition of indigenous political and legal institutions;
3. Acceptance of legitimacy in regulating the lives of communities in accordance with indigenous laws, traditions, and customs.⁴³⁶

Instead of the right to freely determine their political status, the UN Declaration recognizes the right to self-determination concerning indigenous peoples' economic, social and cultural development. Furthermore, the Declaration guarantees the right to self-government in internal and local matters.⁴³⁷ Effective and meaningful participation – the right to consultation or even FPIC with respect to land and resource use and other important matters, such as participation in international decision-making – plays a key role in determining economic, social, and cultural development. The concept of FPIC has been regarded as a part of the "new" self-determination of indigenous peoples. The evolving right to self-determination of indigenous peoples should necessarily indicate a strengthened participatory position for indigenous peoples in international environmental decision-making processes. **In this regard, Finland should promote the active participation of indigenous peoples in the UNFCCC on the basis of new developments**

⁴³² See *Reference re Secession of Quebec* (1998) 2 S.C.R. 217.

⁴³³ International Law Association, Interim Report: The Rights of indigenous peoples at the Hague Conference (2010), at 9-12.

⁴³⁴ Ibid 12.

⁴³⁵ Ibid 11.

⁴³⁶ Ibid 12.

⁴³⁷ Article 4.

in international law. Finland should, thus, not only be a leader with regard to the inclusion of indigenous peoples' representatives in its own national delegations – at the UNFCCC, in Development Cooperation, and REDD processes – but should also encourage other states to do the same.

Climate Change & the Self-Determination of Indigenous Peoples

Due to climate change mitigation, some communities may be denied the possibility to utilize their fossil fuel deposits or the energy required for development. Nevertheless, self-determination needs to be at the core of climate action if the world is not to repeat the mistakes of the past, where well-meaning and sometime generally beneficial policies and developments were prioritized over the rights and livelihoods of indigenous communities, leading to their marginalization, the disposition of land and resources, discrimination, resettlement, acculturation and assimilation. **Self-determination should, thus, serve as a starting point for dialogue on the resource developments, rather than an optional trade-off.** Moreover, self-determination, connected with the idea of justice and the principle of common but differentiated responsibility, has the potential to act as a safeguard for climate action, so that those who are most affected by the effects of climate change, do not bear the greatest cost of mitigation and adaptation policies. There is a risk that self-determination – or, strictly speaking, the ownership and the control of land and resources – may lead to pressure on resource exploitation in order to provide indigenous communities with greater economic autonomy and secure funding for basic social services, as is the case in Greenland or Alaska. However, indigenous peoples should be treated equal to other actors with regard to their resource use and should not be unjustly burdened with the cost of global action against climate change. At the same time, increased control over resources and an acknowledgement of indigenous rights must be coupled with greater responsibility for the use of these lands and resources, especially regarding hydrocarbons, mining, and forestry. **In this context, Finland should promote the concepts of justice and equality with regard to climate change mitigation and adaptation activities, which would underscore indigenous peoples' equality and responsibility, depending on the degree of their control over lands, resources and developments.**

2.5.4. The Free, Prior and Informed Consent (FPIC) of Indigenous Peoples

The right to free, prior and informed consent (FPIC) in relation to resource extraction and other development projects within territories traditionally occupied and used by indigenous peoples is currently a topical issue internationally, regionally, and domestically. As maintained by the study of the Commission on Human Rights, discussions and standard setting surrounding this issue covers a wide range of bodies and sectors – including the safeguard policies of multilateral development banks and international financial institutions; the practices of extractive industries; water and energy development; natural resource management; access to genetic resources and associated traditional knowledge and benefit-sharing arrangements; scientific and medical research; as well as indigenous cultural heritage.⁴³⁸

⁴³⁸ U.N. Commission on Human rights, Sub-Comm. On the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Working Paper: Standard-Setting: Legal Commentary on the

Today, many indigenous peoples are renegotiating their relations to states and new private sector operations seeking access to resources on indigenous peoples' lands.⁴³⁹ In such cases, where multiple parties are interested in traditional territories, indigenous peoples assert their rights via their own representative institutions. Indigenous peoples, thus, seek the support of international human rights bodies in finding new ways for their autonomy and values to be recognized under both international and national laws and systems of decision-making.⁴⁴⁰

On a basic level, the concept of FPIC is very much defined by its phrasing: it is the right of indigenous peoples to make free and informed choices about the development of their lands and resources.⁴⁴¹ In relation to development projects affecting indigenous peoples' lands and natural resources, the respect for the principle of FPIC is important so that: 1) indigenous peoples are not coerced, pressured or intimidated in their choices of development; 2) their consent is sought and freely given prior to the authorization and start of development activities; 3) indigenous peoples have full information about the scope and impacts of the proposed development activities on their lands, resources and well-being; 4) their choice to give or withhold consent over developments affecting them is respected and upheld.⁴⁴²

In its Final Report (2011) of a study on indigenous peoples' right to participate in decision-making, the Expert Mechanism on the Rights of Indigenous Peoples identified components for good practice. Indigenous peoples' involvement in designing processes, as well as their agreement to them, were identified as the most significant indicator of good practice. Other indicators included the extent to which the practice "allows and enhances indigenous peoples' participation in decision-making; allows indigenous peoples to influence the outcome of decisions that affect them; realizes indigenous peoples self-determination; includes, as appropriate, robust consultation procedures and/or processes to seek indigenous peoples' free, prior and informed consent."⁴⁴³ However, **from a legal or technical perspective, FPIC is a much contested and confusing concept.** There are both non-binding and binding international legal instruments and industry standards that purport to require some form of FPIC. As a result, its definition, including terms such as "land", "territories", and "significant impact" are subjects to numerous conflicting interpretations

Concept of Free, Prior and Informed Consent, 57, U.N. Doc. E/CN.4/Sub.2/AC.4/2005/WP.1, 2005 (14 July 2005), at 3. (prepared by Antoanella-Iulia Motoc and the Tebtebba Foundation)

⁴³⁹ Ibid 4.

⁴⁴⁰ See Marcus Colchester and Fergus Mackay, In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent". Forest Peoples Programme, 2004, Access at: <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/fpicipsaug04eng.pdf> (last access 23 October 2012).

⁴⁴¹ Ward, Tara, "The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law", *Northwestern Journal of International Human Rights*, Vol 10:2, 2011: 54.

⁴⁴² U.N. Commission on Human rights, Sub-Comm. On the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Working Paper: Standard-Setting: Legal Commentary on the Concept of Free, Prior and Informed Consent, 57, U.N. Doc. E/CN.4/Sub.2/AC.4/2005/WP.1, 2005 (July 14, 2005), at 3. (prepared by Antoanella-Iulia Motoc and the Tebtebba Foundation), at 15, para 57.

⁴⁴³ Final report of the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, Human Rights Council, Eighteenth session, Agenda item 5, 17 August 2011, at 4.

and requirements for “which FPIC” is to be used.⁴⁴⁴ These will be discussed in greater detail below.

After the adoption of the UNDRIP, the right to FPIC and other participatory rights have been directly linked to and derived from indigenous peoples’ right to self-determination, considered to be the fundamental principle of indigenous peoples’ rights.⁴⁴⁵ For indigenous advocates, they are not only administrative processes, but are an exercise in and expression of the right to self-determination.⁴⁴⁶ The UN Declaration, for example, considers the concept of FPIC as means of ensuring that states both protect and respect the right to self-determination.⁴⁴⁷ As argued by the report of the UN Commission on Human Rights, the self-determination of peoples and the corollary right of FPIC are integral to indigenous peoples’ control over their lands and territories, to the enjoyment and practice of their cultures, and their ability to make choices regarding their own economic, cultural and social development. In order for this right to be meaningful; it must include the right to withhold consent to certain development projects or proposals.

The right to self-determination and FPIC, while fully consistent with norms of democratic consultation, are not equivalent to and should not be reduced to individual participatory rights. Self-determination and FPIC, as collective rights, fundamentally entail peoples’ ability to make choices, as right-bearers and legal persons, regarding their economic, social, and cultural development. They cannot be weakened to the consultation of individual constituents, but must rather enable and guarantee collective decision-making with concerned indigenous peoples and their communities through legitimate customary and agreed processes via their own institutions.⁴⁴⁸ It has been argued that understanding and recognizing indigenous peoples’ collective rights is critical to the implementation of FPIC. As stated by legal scholar Siegfried Weissner, “while individual rights are ascribed to an individual human being as such, who can invoke them in her own name, collective rights are ascribed to groups of people and can only be claimed by the collective entity and its authorized agents.”⁴⁴⁹ The relevant group rights of indigenous peoples also protect culture, internal decision-making, and the control and use of land. Understanding this application of group rights is indispensable in order to enforce a working system for

⁴⁴⁴Frank Seier, ‘Free, Prior and Informed Consent’ under UNDRIP: What Does it Really Mean? Right2Respect, Business and Human Rights Advisors, 2011, at 1, access at: <http://www.right2respect.com/2011/06/%E2%80%98free-prior-and-informed-consent%E2%80%99-under-the-un-declaration-on-the-rights-of-indigenous-peoples-what-does-it-really-mean/>.

⁴⁴⁵BartolomeClavero. The Indigenous Rights of Participation and International Development Policies, 22 Arizona Journal of International & Comparative Law, 41 (2005), 41; Katsuhiko Masaki, Recognition or Misrecognition? Pitfalls of Indigenous Peoples Free, Prior and Informed Consent (FPIC), in Rights-Based Approaches to Development: Exploring the Potential Pitfalls 69 (2009); U.N. Commission on Human Rights (2005), *supra* note X, at 56.

⁴⁴⁶ Ward, Tara. (2011), at 55.

⁴⁴⁷ Ibid 58.

⁴⁴⁸U.N. Commission on Human rights, Sub-Comm. On the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Working Paper: Standard-Setting: Legal Commentary on the Concept of Free, Prior and Informed Consent, 57, U.N. Doc. E/CN.4/Sub.2/AC.4/2005/WP.1, 2005 (July 14, 2005) (prepared by Antoanella-Iulia Motoc and the Tebtebba Foundation), at 12, para 45.

⁴⁴⁹ Siebfried Weissner. “Rights and Status of Indigenous Peoples”, Harvard Human Rights Journal, Vol. 12 Spring 1999, at 120-121.

protecting indigenous peoples, their cultures, and ways of life. To “individualize” these rights would frustrate their purpose.⁴⁵⁰

State duties and obligations defined in international human rights law clearly condition and constrain state sovereignty. They also include an obligation to respect, protect, promote and fulfill the right of all peoples to self-determination.⁴⁵¹ Judge Weeramantry of the International Court of Justice has stated that, “there is not even the semblance of a suggestion in contemporary international law that [human rights] obligations amount to a derogation of sovereignty.”⁴⁵² At times, it has been argued that the concept of FPIC conflicts with state powers of eminent domain and that FPIC is, thus, subordinate to eminent domain. However, “eminent domain is subject to human rights law in the same way as any other prerogative of state and, therefore, should not be granted any special status or exemption, in this case, to justify denial of the right of FPIC.”⁴⁵³

Indigenous rights advocates consider self-determination to be the basis for FPIC. However, according to international human rights jurisprudence, FPIC is legally based on property rights, cultural rights, and the right to non-discrimination.⁴⁵⁴ While these rights recognize a collective element in the case of indigenous peoples they have an individual rather than a collective basis. The UN Human Rights Committee (HRC), for instance, accepts communication from individuals concerning individual human rights. According to HRC case practice, it only receives complaints based on individual rights, such as the right of members of a minority groups in Article 27, but not a right to self-determination (Art.1), which is a right of a collective.⁴⁵⁵ As will be discussed further, FPIC has recently been acknowledged as a part of Article 27. Additionally, FPIC has also been adopted as a part of the biodiversity regime where it is not directly rooted to the question of self-determination, but rather acknowledges that indigenous peoples, as holders of traditional knowledge, may provide a valuable contribution to biodiversity protection and should, thus, participate and share the benefits of the use of, for instance, genetic resources. The question of whether FPIC should be directly linked to self-determination or whether it is,

⁴⁵⁰ Ibid.

⁴⁵¹ U.N. Commission on Human Rights, Sub-Comm. On the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Working Paper: Standard-Setting: Legal Commentary on the Concept of Free, Prior and Informed Consent, 57, U.N. Doc. E/CN.4/Sub.2/AC.4/2005/WP.1, 2005 (July 14, 2005) (prepared by Antoanella-Iulia Motoc and the Tebtebba Foundation), at 14, para 52.

⁴⁵² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro), Separate Opinion of Judge Weeramantry, para 2 (1996). The Committee on the Elimination of Racial Discrimination, recently concluded that “development objectives are no justification for encroachments on human rights, and that along with the right to exploit natural resources there are specific, concomitant obligations towards the local population...” Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname. CERD/C/64/CO/9/Rev.2, para. 15 (2004). The Committee also stated that “While noting the principle set forth in article 41 of the Constitution that natural resources are the property of the nation and must be used by promote economic, social and cultural development, the Committee points out that this principle must be exercised consistently with the rights of indigenous and tribal peoples.”, Ibid, at para 11.

⁴⁵³ Fergus MacKay. “Indigenous Peoples’ Right to Free, Prior and Informed Consent and the World Bank’s Extractive Industries Review”, IV(2) Sustainable Dev. Law & Policy 43-66, at 53 (2004).

⁴⁵⁴ Ward, Tara. “The Right to Free, Prior and Informed Consent: Indigenous Peoples’ Participation Rights within International Law”, *Northwestern Journal of International Human Rights*, Vol 10:2, 2011: 56.

⁴⁵⁵ See, *Lubicon Lake Band v. Canada*, Communication No. 167/1984, CCPR/C/38/D/167/1884.

in fact, more meaningful to speak of an inherent part of the right to cultural integrity must be further examined.

2.5.5. FPIC & The Right to Culture

The right of indigenous peoples to a distinct culture is profoundly established in international human rights law. Several universal human rights instruments recognize the right to culture and apply this right to indigenous peoples via their monitoring bodies. The right of indigenous peoples to cultural integrity in human rights law includes the right to a specific way of life that is closely connected to their traditional lands and natural resources, situated in those lands. This has led human rights monitoring bodies to expand the substantive right to culture to include procedural elements, particularly the affirmation of the right to effectively participate in decision-making relating to the use of indigenous peoples' traditional lands and resources. This has been done independent of whether states have formally recognized indigenous peoples' ownership to the lands that they have traditionally used and continue to use for traditional livelihoods. It is exactly the recognition of the connection between indigenous traditional culture and the use of natural resources that has led to the expansion of general non-discrimination and minority protection to the recognition of the strong participatory rights of indigenous peoples. In 1999, the UN Human Rights Committee and the monitoring body of the International Covenant on Civil and Political Rights (CCPR) began to apply Article 1 of the CCPR (the right of peoples to self-determination) to indigenous peoples in country reports. After the adoption of the UNDRIP, human rights monitoring bodies have started to require that states respect the principle of FPIC, which (as noted earlier) is closely related to the self-determination.

2.5.5.1. The CCPR and UN Human Rights Committee

A key instrument that recognizes minority members' right to enjoy their culture is the CCPR, ratified by most of the global community.⁴⁵⁶ Article 27 of the CCPR may be regarded as a basic norm in protecting the right of indigenous peoples to their culture. Article 27 recognizes, *inter alia*, an individual right to enjoy one's culture in a community with other members of the cultural collective.⁴⁵⁷ Thus, even though protection is afforded

⁴⁵⁶ International Covenant on Civil and Political Rights (CCPR), G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 23 March 1976, 999 *United Nations Treaty Series* 171. Status of ratification: 161 (6 May 2008); Optional Protocol to the CCPR, G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 59, UN Doc. A/6316 (1966), adopted 16 December 1966, entered into force 23 March 1976, 999 *United Nations Treaty Series* 302. There are 111 parties to the Optional Protocol (6 May 2008). A State Party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.

⁴⁵⁷ Article 27 states: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." For an analysis of the environmental human rights of indigenous peoples, see Heinämäki, L., "The Protection of the Environmental Integrity of Indigenous Peoples in Human Rights Law", *Finnish Yearbook of International Law*, Vol. XVII (2006): 1-46.

to minority groups' individual members, the substance of minority rights entails a collective dimension,⁴⁵⁸ which has a particular importance for indigenous peoples' members. The UN Human Rights Committee, the monitoring body of the CCPR⁴⁵⁹, has interpreted this article as including the "rights of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong."⁴⁶⁰ In reaching this conclusion, the Committee recognizes that indigenous peoples' subsistence and other traditional economic and social activities are an integral part of their culture. Interference with such activities may be detrimental to their cultural integrity and survival.⁴⁶¹

The Committee implicitly acknowledged the environmental dimension in recognizing the positive protection obligation by maintaining that, in the context of indigenous peoples, the right to culture under Article 27 may apply to a way of life that is closely connected to a territory and the use of its resources. The Committee clarified that the right comprises traditional activities, such as fishing and hunting. Furthermore, it stated that the enjoyment of such rights might require positive protective legal measures and methods for ensuring the *effective* participation of minority community members in decisions that affect them.⁴⁶² In July 2000, the Committee added that Article 27 requires states to utilize the necessary steps in protecting indigenous peoples' titles to and interests regarding their traditional lands and to secure the continuation and sustainability of indigenous minorities' traditional economies.⁴⁶³

General Comments of the UN Human Rights Committee are adopted by a consensus of the Committee members and may be regarded as developing an important and authoritative source of interpretation of the Covenant.⁴⁶⁴ Even though they are not binding in a strictly legal sense, they may be considered to be "quasi-authoritative" sources in the interpretation of the articles of the CCPR. Thus, it may be argued that if subsistence activities are to be safeguarded, the land, resources, and environment of indigenous peoples require protection against environmental interference.⁴⁶⁵ The Committee's jurisprudence recognizes the link between the right to benefits of culture and protection

⁴⁵⁸ See Hanski, R. and Scheinin, M., *Leading Cases of the Human Rights Committee* (Institute for Human Rights, Åbo Akademi University, Turku/Åbo, 2003) 375; In *Sandra Lovelace v. Canada* (Communication No. 24/1977, UN Doc. CCPR/C/OP/1 (1985)), the Committee says in Para. 15: "In the opinion of the Committee the right of Sandra Lovelace to access to her native culture and language, "in community with the other members" of her group, has in fact been, and continues to be, interfered with, because there is no place outside the Tobique Reserve where such a community exists."

⁴⁵⁹ The UN Human Rights Committee was established under Article 28 of the CCPR. It is composed of 18 independent experts in the field of human rights elected by the States Parties to the CCPR (see CCPR, Arts 28-34). Although they are nominated and elected by the States Parties to the CCPR, the members of the Committee "serve in their personal capacity", meaning that they are independent and do not represent the states that nominated them (CCPR, Art. 28(3)).

⁴⁶⁰ *Lubicon Lake Band v. Canada*, Communication No. 167/1984, CCPR/C/38/D/167/1984.

⁴⁶¹ See also *Kitok v. Sweden*, Communication No. 197/1985, CCPR/C/33/D/197/1985 (1988), access at: <http://www1.umn.edu/humanrts/undocs/197-1985.html> (last accessed: 21 June 2013).

⁴⁶² *Ibid* para 7.

⁴⁶³ Concluding Observations of the Human Rights Committee: Australia, UN Doc. CCPR/CO/69/AUS (2000), paras 10-11.

⁴⁶⁴ See, for instance, Nowak, M. "The International Covenant on Civil and Political Rights" in R.Hanski and M.Suksi (eds), *An Introduction to the International Protection of Human Rights. A Textbook* (2nd revised edn, Institute for Human Rights, Åbo Akademi University, Turku/Åbo (2002): 79-100, at 94.

⁴⁶⁵ See also Leighton, M.T., (1998), *supra* note 68, 8.

from environmental interference in territories that indigenous peoples are entitled to own or use. In managing indigenous issues, Article 27 of the CCPR, which grants minorities the right to culture, has been central in the Human Rights Committee's practice. The Committee has increasingly interpreted the Article in a creative and expansive manner.⁴⁶⁶ For example, in *Lubicon Lake Band v. Canada*, the applicants alleged that the provincial government of Alberta had deprived Lake Lubicon Indians of their means of subsistence and right to self-determination by selling oil and gas concessions to their lands. The UN Human Rights Committee found that historical inequities and recent developments, including oil and gas exploration, were contrary to Article 27 of the CCPR and threatened the way of life and culture of the Lake Lubicon Band, thus, violating their minority rights.⁴⁶⁷ Aside from emphasising that competing land use may violate an indigenous group's right to enjoy their own culture, the case demonstrates how the cumulative effect of a step-by-step development, with adverse consequences for the life of indigenous inhabitants, ultimately constitutes a violation of Article 27.⁴⁶⁸ As noted by Kingsbury, the decision of the Lubicon Lake Band case implies that the right of a groups' members to enjoy their culture may be violated if they are neither allocated the necessary land or control over resource development in the pursuit of economic activities that are of central importance to their culture, such as hunting or trapping. A right to the enjoyment of culture may extend to the maintenance of the group's cohesiveness through the possession of a land base and the pursuit of important cultural activities of an economic nature.⁴⁶⁹

According to the Committee, Article 1, which guarantees peoples' rights, cannot be used in individual communications because the Optional Protocol provides a procedure under which individuals may claim the violation of their individual rights.⁴⁷⁰ However, in *Apirana Mahuika et al v. New Zealand*⁴⁷¹, the Committee opened up the possibility to apply the right to self-determination. The Committee has stated that the provisions of Article 1 (the right to self-determination) may be relevant in interpreting other rights that are protected by the Covenant, particularly those set out in Article 27.⁴⁷² As mentioned, in its Concluding Observations to state reports, the UN Human Rights Committee began applying Article 1 of the CCPR (the right of peoples to self-determination) with regard to indigenous peoples in 1999.⁴⁷³

⁴⁶⁶ Kingsbury, B., "Reconciling Five Competing Conceptual Structures of Indigenous People's Claims in International and Comparative Law", 31 *New York University Journal of International Law and Politics* (2001): 189-250, 204-205.

⁴⁶⁷ *Lubicon Lake Band*, *supra* note 124, Para. 33.

⁴⁶⁸ See Scheinin's analysis regarding paras 32.2 and 33 in Scheinin, M., "The Right to Enjoy a Distinct Culture: Indigenous Land and Competing Uses of Land" in T.S. Orlin, A. Rosas and M. Scheinin (eds), *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach*, Institute for Human Rights, Åbo Akademi University, Turku/Åbo (2000): 159-222, 166.

⁴⁶⁹ See Kingsbury, B., "Claims by Non-State Groups in International Law", 25 (3) *Cornell International Law Journal* (1992): 481-514.

⁴⁷⁰ *Lubicon Lake Band v. Canada*, *supra* note 124, Para. 32.1.

⁴⁷¹ *Apirana Mahuika et al v. New Zealand*, Communication No. 547/1993, UN Doc. CCPR/C/70/D/547/1993 (2000).

⁴⁷² Para 9.2.

⁴⁷³ Article 40 of the CCPR requires States Parties to submit reports on measures taken to give effect to the rights defined therein. An initial report is to be submitted one year after the state ratifies the CCPR, and further reports are required periodically (normally every five years). State reports and the Concluding Observations of the UN Human Rights Committee. See Concluding Observations of the Human Rights Committee on Canada

Over the last two decades, the UN Human Rights Committee has seen several cases relating to indigenous peoples' right to culture in relation to the environment. In 2009, the Committee made a historical shift by recognizing that the mere consultation of the indigenous community in question may not always satisfy the requirement of Article 27. *Poma Poma v. Peru*⁴⁷⁴ concerned a dispute over the exploitation of natural water resources, which caused a direct and negative impact on the indigenous Aymara peoples' traditional means of subsistence – the raising of llamas and alpacas on which the Aymara community depended.⁴⁷⁵ In relation to environmental interference, the Committee noted that, although the state may legitimately take steps to promote its economic development, this may not undermine the rights protected by Article 27.⁴⁷⁶ The Committee repeated its earlier requirement of sustainable livelihood by stating that “only measures with a limited impact on the way of life and livelihood [of persons belonging to that community] would not necessarily amount to a denial of the rights under Article 27.”⁴⁷⁷ The Committee reiterated its earlier view that the admissibility of measures, which *substantially* compromise or interfere with culturally significant economic activities, depend on whether the community's members have had the opportunity to participate in the decision-making process and whether they will continue to benefit from their traditional economy.⁴⁷⁸ For the first time, in considering the meaning of the requirement of “effective” participation, the Committee stated that mere consultation is insufficient. Instead, the FPIC of the community's members was required.

Based on the details above and the fact that Ángela Poma, the case author, was unable to continue to benefit from traditional economic activity, the Committee concluded that the activities carried out by the State party violated the author's right, as well as the right of other members of her group, to enjoy her own culture together in accordance with Article 27 of the Covenant.⁴⁷⁹ This case shows how the UN Human Rights Committee is

UN Doc. CCPR/C/79/Add.105 (1999). Explicit references to either Article 1 or to the notion of self-determination have also been made in the Committee's Concluding Observations on Mexico, UN Doc. CCPR/C/79/Add.109 (1999); Norway, UN Doc. CCPR/C/79/Add.112 (1999); Australia, UN Doc. CCPR/CO/69/Aus (2000); Denmark, UN Doc. CCPR/CO/70/DNK (2000); Sweden, UN Doc. CCPR/CO/74/SWE (2002); Finland, UN Doc. CCPR/CO/82/FIN (2004); Canada, UN Doc. CCPR/C/CAN/CO/5 (2005); and the United States, UN Doc. CCPR/C/USA/CO/3 (2006); It should be noted that also the Committee on Economic, Social and Cultural Rights has applied Article 1 on indigenous peoples. See, for instance, CESCR Concluding Observations on the Russian Federation, UN doc. E/C.12/1/Add.94, 2003, Paras 11,39., [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.94.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.94.En?Opendocument) (accessed 19 January 2007). See also CESCR General Comment No. 15, on the Right to Water (ICESCR Arts. 11,12) UN doc. E/C.12/2002/11, at para. 7.

⁴⁷⁴ Human Rights Committee, Communication No. 1457/2006, Doc. CCPR/C/95/D/1457/2006 of 27 March 2009.

⁴⁷⁵ Due to the building of wells, water had been diverted from the Peruvian highlands to a coastal city with the result that Aymara community living in the highlands had been deprived of their access to underground springs. The lack of water seriously affected the only means of subsistence of the community. For an analysis of the case, See Gcke, K., “The Case of Ángela Poma Poma v. Peru before the Human Rights Committee, The Concept of Free, Prior and Informed Consent and the Application of the International Covenant on Civil and Political Rights to the Protection and Promotion of Indigenous Peoples' Rights”, *Max Planck Yearbook of United Nations Law*, edited by A. von Bogdandy and R. Wolfrum, Vol 14 (2010): 337-370.

⁴⁷⁶ Ibid para 7.4.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid para 7.6.

⁴⁷⁹ Ibid.

ready to expand the interpretation of Article 27 further than before – including situations where environmental interference on indigenous peoples’ lands are severe enough and when the state has not committed to proper means of consultation with the indigenous community at hand. It is clearly not a co-incidence that this decision was released shortly after the adoption of UNDRIP⁴⁸⁰, which endorses the concept of FPIC. Although the lack of a direct reference to the UN Declaration has been criticized,⁴⁸¹ it is evident that the Declaration has played a role in this fundamental shift. The Committee’s decision is of outmost importance in setting new international standards and can, thus, be expected to set the course for the UN Committee’s future decisions.⁴⁸² Furthermore, other human rights monitoring bodies closely follow Committee developments and adopt similar approaches.⁴⁸³

2.5.5.2. Other Human Rights Monitoring Bodies

Both the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Racial Discrimination (CERD) have recognized the FPIC

⁴⁸⁰ After preparations lasting more than a decade, the UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly on 7 September 2007. UN Declaration on the Rights of Indigenous Peoples, 7 September 2007, Sixty-first Session, A/61/L.67, access at: <http://www.iwgia.org/sw248.asp> (last accessed: 5 May 2013).

⁴⁸¹ See Göcke, K. (2010), *supra* note 147, 353-357.

⁴⁸² Despite the fact that there does not seem to be a common understanding of the legality of the views of the UN Human Rights Committee, some kind of authoritative position must be given to the body of the treaty, which has been ratified by the majority of states and was established specifically for the purpose of monitoring the fulfilment of the obligations of the State Parties, and has the task of interpreting the given articles when applying them to individual cases. According to the Committee of the International Law Association, treaty interpretations by monitoring bodies become authoritative only if states do not oppose them. For an analysis on these issues, see The study of the International Human Rights Law and Practice – Committee of International Law Association (ILA) “Final Report on the Impacts of Findings of the United Nations Human Rights Treaty Bodies”.

⁴⁸³ The Committee on Economic, Social and Cultural Rights, for instance, has recognized the right of indigenous peoples to culture, lands and resources in many occasions. See Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities Forty-fourth session, Item 8 of the provisional agenda, E/CN.4/Sub. 2/1992/16, 3 July 1992, The Realization of Economic, Social and Cultural Rights, Final Report submitted by Mr. Danilo Türk, Special Rapporteur, Para 198., access at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1992.16.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1992.16.En?Opendocument) (last accessed: 17 April 2013). See also Concluding Observations of the Committee on Economic, Social and Cultural Rights: Finland 01/12/2000, E/C.12/1/Add. 52, Para 25, access at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ E.C.12.1.Add.52.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ E.C.12.1.Add.52.En?Opendocument) (last accessed: 18 April 2013). CESCR has recognized the importance of cultural rights for individual and collective identity, the relationship between cultural rights and other rights such as land and resource rights in other Concluding Observations as well. See for instance CESCR Concluding Observations on Panama, UN doc. E/C.12/1/Add.64, 2001, Para 12, access at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.64.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.64.En?Opendocument) (last accessed: 18 April 2013) ; Colombia, UN doc. E/C.12/Add.1/74, 2001, Para 12, access at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/975c32e988faf98a8025648a004ecd6f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/975c32e988faf98a8025648a004ecd6f?Opendocument) (last accessed 19 April 2013); Ecuador, UN doc. E/C.12/1/Add. 100, 2004, Para. 58, access at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.100.En? Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.100.En? Opendocument) (last accessed: 19 April 2013).

⁴⁸³ CESCR Concluding Observations on the Russian Federation, UN doc. E/C.12/1/Add.94, 2003, Paras 11,39, access at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.94.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.94.En?Opendocument) (last accessed 19 April 2013). See also CESCR General Comment No. 15, on the Right to Water (ICESCR Arts. 11, 12) UN doc. E/C.12/2002/11, Para. 7, access at: <http://www.ohchr.org/english/bodies/cescr/comments.htm> (last accessed: 17 April 2013).

of indigenous peoples. CESCR recognizes indigenous peoples' collective rights to lands and resources through their right to participate in and maintain their cultures.⁴⁸⁴ CESCR has, on a number of occasions, highlighted the need to obtain indigenous peoples' consent in relation to resource exploitation in their traditional lands. After the adoption of the UNDRIP, the CESCR further expanded on the right of indigenous peoples to FPIC in General Comment No. 21.⁴⁸⁵ This interpretation of Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which outlines the right to participate in cultural life, includes indigenous peoples' rights to restitution or the return of lands, territories and resources traditionally used and enjoyed by indigenous communities, if taken without the prior and informed consent of the affected peoples.⁴⁸⁶ Furthermore, it calls on State Parties to the Convention to "respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights."⁴⁸⁷

The CERD has also recognized the requirement for the consent of indigenous peoples. In its General Recommendation 23, the CERD called on states to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources,"⁴⁸⁸ in fulfillment of the non-discrimination norm. The CERD further requires states to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent."⁴⁸⁹ In its concluding observations, the CERD has required consultations with the aim of gaining indigenous communities' consent regarding development and resource exploitation on their traditional lands.⁴⁹⁰ The CERD has used the framework of protecting indigenous peoples from discrimination, and upholding the right to equality, in promoting their participatory rights, even to the extent of the right to FPIC.⁴⁹¹ In its 2008 Concluding Observations on Russia, for example, the CERD recommended that the Government of Russia "seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licenses to private companies for

⁴⁸⁴Ward, Tara. "The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law", *Northwestern Journal of International Human Rights*, Vol 10:2, 2011: 57.

⁴⁸⁵CESCR, General Comment No. 21 Right of everyone to take part in cultural life (art. 15, 1(a), of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/21 (21 December 2009).

⁴⁸⁶Ibid para 36.

⁴⁸⁷Ibid para 37.

⁴⁸⁸General Recommendation 23: Indigenous Peoples, Committee for the Elimination of Racial Discrimination, U.N. Doc. A/52/18, annex V; CERD/C/51/Misc.13/Rev.4 (1997), Para 5.

⁴⁸⁹Ibid para 4 (d).

⁴⁹⁰ See, for instance, U.N. Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Ecuador, U.N. Doc. CERD/C/ECU/CO/19; Committee on the Elimination of Racial Discrimination, Seventy-fifth Session, 3-28 August 2009; Consideration of reports submitted by state parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Colombia, CERD/C/COL/CO/14, Para 20; Committee on the Elimination of Racial Discrimination, Seventy-fourth Session, 16.2.-6.3. 2009, Consideration of reports submitted by state parties under article 9 of the Convention, Suriname, CERD/C/SUR/CO/12, Para 18.

⁴⁹¹Ward, Tara, "The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law", *Northwestern Journal of International Human Rights*, Vol 10:2, 2011: 57.

economic activities on territories traditionally occupied or used by those communities.”⁴⁹² Furthermore, in 2012, the CERD clearly acknowledged FPIC in relation to Sami indigenous people in Finland, whereby it expressed a concern with regard to the unresolved issue of Sami land rights – which has not been settled in a satisfactory manner – and the continuation of various projects and activities, such as mining and logging, on the traditional lands of Sámi people without their prior, free and informed consent.⁴⁹³

2.5.6. FPIC & The Right to Property

To date, Finland has supported the preparation of regional decisions that reinforce the rights of indigenous peoples within the framework of the Organization of American States (OAS). It is important to mention that the Inter-American Court of Human Rights – a monitoring body of the American Human Rights Convention and Declaration that is well known for its innovative approach that directly accounts for development in the United Nations human rights system – has tested UNDRIP’s requirement of FPIC and directly applied it in recent case law. The Inter-American Court interprets Article 21 (the right to property) of the American Declaration of Human Rights in light of the right of self-determination and, thus, requires FPIC. Due to several cases, including the *Saramaka* case, indigenous peoples’ right to communal property is closely connected to their right to culture and has become well-established and profoundly endorsed in the Inter-American Human Rights system.

In the *Saramaka v. Suriname* case⁴⁹⁴, which surfaced after the adoption of the UN Declaration, the Inter-American Court utilized both the Declaration as well as common Article 1 of CCPR and CESCRC as guidelines in adopting the concept of FPIC, as well as in interpreting the right to property in light of the right to peoples’ self-determination. In relation to logging and mining activities that have taken place in the territory of the Saramaka community, the Court has made a special reference to Article 32 of the UNDRIP, which requires states’ consultation and cooperation with indigenous peoples in obtaining their FPIC prior to the approval of a project affecting their lands, territories, and other resources.⁴⁹⁵ Furthermore, the Court stated that the right to property (Article 21) of the American Convention must be understood in light of rights recognized under common Article 1 of CCPR and CESCRC (self-determination). It must also be understood in light of Article 27 of the CCPR; to the effect of calling for indigenous and tribal communities’ members to freely determine and enjoy their own social, cultural, and economic development. This includes the right to enjoy their spiritual relationship to the territory that they have traditionally used and occupied.⁴⁹⁶ Accounting for the social, cultural, economic, and spiritual aspects of the relationship of indigenous peoples to their environment, the

⁴⁹²See UN Doc. CERD/C/RUS/CO/19, 20 August 2008 Concluding observations of the Committee on the Elimination of Racial Discrimination Russian Federation 73rd CERD session.

⁴⁹³ Committee on the Elimination of Racial Discrimination, Eighty-first session, 6-31 August 2012, Consideration of reports submitted by State parties under article 9 of the convention, Concluding observation of the Committee on the Elimination of Racial Discrimination, Finland, CERD/C/FIN/CO/20-22, Para 13.

⁴⁹⁴ *Saramaka People v. Suriname*, Inter-American Court of Human Rights, Judgment of November 28, 2007, Series C, No 172.

⁴⁹⁵ Ibid para 131 of the Decision.

⁴⁹⁶ Ibid para 95.

Court adopts an integral approach in balancing the interests between the state for economic development, on the one hand, and indigenous peoples' traditional way of life, on the other. In finding a violation of Article 21 (the right to property), the American Convention the Court clearly demonstrates how economic development must be environmentally and socially sustainable with regard to the traditional lands of indigenous peoples.

The Court explained the meaning behind states' duty to consult indigenous and tribal peoples. According to the Court, consultations must be carried out via culturally appropriate procedures and with the objective of reaching an agreement. Furthermore, the Court continued by stating that the Saramakas must be consulted in accordance with their own traditions. This must not only take place when the need to obtain approval from the community arises, but during the early stages of a development or investment plan. Early notice provides time for internal discussion within communities and proper feedback for the state. The Court further noted that the state must ensure that members of the Saramaka people are aware of potential risks, including environmental and health risks, so that the proposed development or investment plan is knowingly or voluntarily accepted.⁴⁹⁷ Finally and significantly, the Court has noted that, with regard to large-scale development or investment projects that could have a major impact on the Saramaka territory, the state has a duty to not only consult with the Saramakas, but to also obtain their FPIC based on their customs and traditions.⁴⁹⁸ The Court ruled that the state shall adopt necessary legislative, administrative, and other measures in recognizing and ensuring the right of the Saramaka people to be effectively consulted.⁴⁹⁹

2.5.7. FPIC & Land and Natural Resource Rights

For indigenous peoples, traditional lands, territories and resources are of existential importance.⁵⁰⁰ They have, thus, sought to secure ownership, use and control rights over their ancestral lands and resources. For indigenous peoples, land and resources are more than mere sources of economic wealth; their ability to reside communally upon their ancestral land and to operate under traditional land tenure systems is inextricably tied to the preservation of their culture and traditional modes of subsistence. Indigenous peoples have been successful in gaining recognition of specific rights to ancestral lands and resources under the international human rights framework. The lands and resource rights of indigenous peoples are partly grounded on the rights to self-determination, cultural integrity, and property.⁵⁰¹

Under international human rights law, indigenous peoples have both substantive and procedural land and resource rights. Miranda has divided substantive rights into three

⁴⁹⁷ Ibid para 133.

⁴⁹⁸ Ibid para 134.

⁴⁹⁹ Ibid para 8 of the Operative Paragraphs.

⁵⁰⁰ It is the relationship that indigenous peoples have with their lands, territories and resources that defines them; see J. Martinez Cobo, 'Study of the Problem of Discrimination against Indigenous Populations', UN Doc. E/CN.4/Sub.2/1986/7/Add.4 of 28 June 1983, paras 379-80.

⁵⁰¹ Miranda, Lillian Aponte, Introduction to indigenous peoples' status and rights under international human rights law, in Randall S. Abate and Elisabeth Ann Kronk, *Climate Change and Indigenous Peoples, The Search for Legal Remedies*, Edward Elgar, Cheltenham, UK, Northampton, MA, USA (2013): 39-62, at 56.

categories: 1) the right to legal recognition, demarcation and titling of land that indigenous peoples have traditionally owned, occupied, used or acquired.⁵⁰² The International Law Association (ILA)⁵⁰³, interpreting Article 26(2) of the UN Declaration, has suggested that it “reflects a vast range of other international instruments and can be reasonably considered as being part of customary international law”,⁵⁰⁴ 2) the right to ownership, use, enjoyment, control and development of such land irrespective of formal title and in accordance with indigenous peoples’ own land tenure systems⁵⁰⁵; 3) the right, at a minimum, to the use of natural resources associated with such land where the resources represent an essential element of the indigenous community’s cultural identity.⁵⁰⁶ As pointed out by the ILA Report on the rights of indigenous peoples, the extent of indigenous peoples’ rights to their natural resources remains contested in some cases and the UN Declaration’s provisions do not wholly clarify relevant international law. However, indigenous peoples’ rights over said resources are strongly reinforced by the fact that the latter usually represent an essential element of these peoples’ cultural identity.⁵⁰⁷

Climate change threatens indigenous peoples’ right to culture, traditional way of life and thus the ability to use their lands in a traditional manner – leading to the infringement of internationally recognized human rights to land and natural resources. With regard to climate change policy, states should recognize this aspect of indigenous rights and strengthen the meaningful participation of indigenous peoples in climate change negotiations, including mitigation and adaptation plans and programs, development cooperation, as well as REDD+. **Finland should, thus, take a leading role in advancing indigenous peoples’ participation, on the basis of their well-established human rights, which states have committed to protecting and promoting.** For more recommendations on how the link between climate change, indigenous women, and self-determination, see the Section 2.6.6. Intersectionality: The Role of Indigenous Women. Moreover, specific recommendations for Finnish Foreign Policy with regard to REDD+.

2.5.7.1. ILO Convention No. 169

Article 16 of the ILO Convention No. 169 refers to the principle of FPIC in the context of the relocation of indigenous peoples from their land. Furthermore, Article 7 recognizes indigenous peoples’ right to decide their own priorities for the process of development and to exercise control, to the extent possible, over their own economic, social and cultural development. In articles 2, 5 and 15, the Convention requires that states fully consult with indigenous peoples and ensure their informed participation in the context of development, in national institutions and programmes, and when managing lands and resources. As a general principle, Article 6 requires governments to establish means for enabling indigenous and tribal peoples to participate at all levels of decision-making, in elective and

⁵⁰² Miranda, L.A. (2013), at 56.

⁵⁰³ The International Law Association was founded in Brussels in 1873. Its objectives, under its Constitution, are “the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law”. The ILA has consultative status, as an international non-governmental organisation, with a number of the United Nations specialised agencies.

⁵⁰⁴ ILA Report, at 23.

⁵⁰⁵ UNDRIP, art. 26,28.

⁵⁰⁶ Ibid art 32. Miranda, L.A. (2013), at 56.

⁵⁰⁷ ILA Report, at 21.

administrative bodies. It also requires governments to consult indigenous and tribal peoples, through adequate procedures, as well as through their representative institutions when consideration is given to legislative or administrative measures that may directly affect such peoples. The consultation must be undertaken in good faith, in a form appropriate to the circumstances and with the objective of achieving consent. Some scholars have, thus, argued that Articles 6 and 7 of the ILO Convention “reflect the spirit of prior informed consent and apply to each provision of ILO 169.”⁵⁰⁸

In applying the Convention, the ILO has noted that consultations must take place when a variety of indigenous interests are involved, including legislative measures regulating the consultation process itself, constitutional provisions concerning indigenous peoples, the development of lands adjacent to or in indigenous territories, as well as the complete destruction of those lands.⁵⁰⁹

Furthermore, participatory rights have played a key role in the interpretation and application of Conventions, serving as the foundation of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)^{510, 511}. For example, while examining Ecuador’s non-compliance with the Convention, the CEACR stated that, “the spirit of consultation and participation constitutes the cornerstone of ILO Convention No. 169 on which all its provisions are based.”⁵¹² In cases concerning oil exploration concessions in Ecuador, the ILO Committee has emphasized Article 6 (2), which requires that consultations take place in good faith, through culturally appropriate procedures, and with the objective of reaching an agreement with the affected indigenous peoples. The CEACR has stated that, “the concept of consulting the indigenous communities that could be affected by the exploration or exploitation of natural resources includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord.”⁵¹³ The CEACR has repeatedly called on State Parties to respect their obligations

⁵⁰⁸David C. Baluarte, *Balancing Indigenous Rights and a State’s Right to Develop in Latin America: The Inter-American Rights Regime and ILO Convention 169*, 4 Sustainable Development Law & Policy 9, 10 (2004).

⁵⁰⁹See Anaya (2005), at 11. See Report of the Committee Set up to Examine the Representation Alleging Non-Observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Made Under Article 24 of the ILO Constitution by the Central Unitary Workers’ Union (CUT), ILO Doc. GB. 282/14/2 (Nov. 21, 2001); Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Made Under Article 24 of the ILO Constitution by the Union of Workers of the Autonomous University of Mexico (STUNAM) and the Independent Union of Workers of La Jornada (SITRAJOR). ILO Doc. GB.289/17/3 (Mar. 19, 2004); Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Made Under Article 24 of the ILO Constitution by the Central Unitary Workers’ Union (CUT) and the Colombian Medical Trade Union Association, ILO Doc. GB.282/14/3 (Nov. 14, 2001).

⁵¹⁰The Committee of Experts on the Application of Conventions and Recommendations

⁵¹¹Ward, Tara, *supra* note x, at 60.

⁵¹²ILO, Report of the Committee set up to examine the representation alleging non-observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the ConfederacionEcuatoriana de OrganizacionesSindicalesLibres (CEOSL), ILO Doc. GB.282/14/2 (Nov. 14, 2001).

⁵¹³Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Made Under Article 24 of the ILO Constitution by the ConfederacionEcuatoriana de OrganizacionesSindicalesLibres (CEOSL), ILO Doc. GB.282/14/2 (Nov. 14, 2001), Para 38.

to consult with indigenous peoples prior to the exploration and exploitation of natural resources within their traditional territories, and has required the adoption and implementation of domestic legislation in order to facilitate such consultations.⁵¹⁴ However, the CEACR does not have a way of enforcing its recommendations.⁵¹⁵ Given that ILO No. 169 has been ratified by and is only binding on 22 states, its impact is limited in developing customary law.⁵¹⁶

The land rights provisions of the ILO Convention are often considered to be the crux of the Convention. However, it is unclear as to what these provisions require in practice. Article 14, the base provision on land rights, requires the recognition of the rights of ownership and possession of the concerned peoples' traditionally occupied land. Governments must take necessary steps in identifying and guaranteeing the effective protection of, as well as rights of ownership and possession of (concerned) indigenous peoples' traditionally occupied lands.⁵¹⁷ In some cases, it has been suggested that the right to possession and land use would satisfy the conditions laid down in the Convention.⁵¹⁸ In Finland, for instance, it has been proposed that, while land ownership should remain with the Finnish State, a Directorate of Sami Homeland should be established to decide on general guidelines for governing the use of state-owned land in the Sami Homeland.⁵¹⁹ Furthermore, the Convention has recognized the use of lands that indigenous and tribal peoples do not occupy, but have had access to for their subsistence and traditional activities, as an "additional" right rather than an alternative to ownership. The relevant provision (Article 14.1.) was inserted to cover the situation of many indigenous and tribal peoples with long established grazing, hunting or gathering rights to lands to which they do not have a written title.

Article 15 concerns indigenous peoples' rights to resources pertaining to their lands. This is an especially a difficult provision, drafted in vague terms that must be applicable across many different national situations.⁵²⁰ The first paragraph states that, "the rights of these peoples to the natural resources pertaining to their lands shall be specially

⁵¹⁴See CEACR, Individual Observations concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) Ecuador, ILO Doc. 062010ECU 169 (2010), para 4; CEACR, Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) Guatemala, ILO Doc. 062006GTM169 (2006), paras 10,13 and 15; CEACR, Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) Mexico, ILO Doc. 062006MEX169 (2006), para 10.

⁵¹⁵See, generally, Shin Imai, Ladan Mehravar & Jennifer Sander, Breaching Indigenous Law: Canadian Mining in Guatemala, 6 Indigenous Law Journal 101, 130 (2007).

⁵¹⁶See, Enzamaría Tramontana, The Contribution of the Inter-American Human Rights Bodies to Evolving International Law on Indigenous Rights over Lands and Natural Resources, 17 International Journal of Minority and Group Rights, 241, at 242 (2010); Alexandra Xanthaki, Indigenous Rights in International Law over the Last 10 Years and Future Developments, 10 Melbourne Journal of International Law 27, (2009), at 32.

⁵¹⁷Article 14.2.

⁵¹⁸Roy, C. and Kaye, M., 'The International Labour Organization: A Handbook for Minorities and Indigenous Peoples', Minority Rights Group International and Anti-Slavery International (2002), at 31-35.

⁵¹⁹Saamelaisoikeuksien mietintö – Ehdotus maahan, veteen, luonnonvaroihin ja perinteisiin luontaiselinkoihin liittyvien oikeuksien järjestämisestä saamelaiden kotiseutalueella valtion mailla. Oikeusministeriö, Helsinki 2001. The proposal received several dissenting opinions, including the Saami members. The Ministry of Justice proceeded to draft a government bill via the Saami Homeland Consultative Committee in 2002, which was later disbanded due to negative comments from numerous stakeholders. See, T. and J. Joona, The Historical Basis of Saami Land Rights in Finland and the Application of ILO Convention No. 169, The Yearbook of Polar Law, Vol 3, 2011: 351-388, at 374.

⁵²⁰Ibid 19.

safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.” The provision recognizes that governments often retain exclusive ownership of some natural resources in different forms – whether mineral, sub-surface, or even sometimes renewable resources – but notes that indigenous peoples also have a claim such resources within a particular framework.⁵²¹ The second paragraph of the article phrases this argument by providing that, when a government retains the ownership of mineral or sub-surface resources, it must consult indigenous peoples before allowing any exploratory or exploitative programmes. This provides them with an opportunity to determine whether, and to what extent, their interests may be prejudiced. The article then goes on to provide that, “wherever possible, these peoples shall be able to participate in the benefits of the exploitation of resources, and shall always receive fair compensation for any damages they may sustain as a result of these activities.”

Whereas substantive land and resource rights are difficult to interpret in light of the ILO Convention No. 169, the right to participate effectively (e.g. negotiations in good faith) with an attempt to reach an agreement is a well-established right under the Convention. It may be argued that, after the adoption of the UNDRIP, consultations require a serious and firm attempt to reach an agreement in cases where a state or a third party aims to use or exploit indigenous peoples’ traditional lands and may, thereby, significantly affect indigenous peoples’ own land use. For instance, in a large-scale project, FPIC should be required and is widely accepted by human rights law, as well as elaborated on by the UN Human Rights Committee.

2.5.7.2. *UN Declaration on the Rights of Indigenous Peoples*

The UNDRIP is a result of two decades of advocacy and negotiations by indigenous peoples’ rights advocates.⁵²² The Declaration as a whole is based on the principle of indigenous peoples’ right to self-determination and that “by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁵²³ It has been argued that the subsequent and more operative articles of the Declaration outline what self-determination would look like in practice.⁵²⁴ Thus, it has been said that the Declaration articulates FPIC in relation to self-determination, rather than as a derivative right to culture or the right to non-discrimination, as previously discussed.⁵²⁵

Similarly to ILO Convention No. 169, substantive rights to lands and resources are ambiguous. Article 26 is arguably the most important provision of the UNDRIP, dealing with lands, territories and resources. The most contentious paragraph, Article 26(1), expresses the general right of indigenous peoples to lands, territories and resources that they have traditionally owned, occupied, or otherwise used or acquired in the past. Article

⁵²¹ Sweptson, L., ‘Economic, Social and Cultural Rights under the 1989 Convention’ (1998), at 44.

⁵²² Anaya, J., *The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era*, in Claire Charters & Rodolfo Stavenhageneds, *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (2009), at 184.

⁵²³ Article 3.

⁵²⁴ Davis, Megan, *Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples*, 9 *Melbourne Journal of International Law*, 439, at 461.

⁵²⁵ Ward, Tara. (2011), *supra* note 76, 58.

26(2) expresses their right to own, use, develop and control the lands, territories and resources that they currently possess. While the ILA argues that indigenous peoples' land rights have already become a part of customary international law, this may be questioned, especially when discussing ownership rights.⁵²⁶ However, it may convincingly be argued, that international human rights law establishes land-use and control rights for indigenous peoples in relation to their traditional lands and resources.

Indigenous peoples' possibilities to control developments concerning their lands are well established in the UNDRIP. It explicitly calls for the FPIC of indigenous peoples in: 1) Article 10 in the case of relocation of indigenous communities; 2) Article 19 when a State is adopting legislative or administrative measures that affect indigenous peoples; and 3) Article 29 regarding the disposal of hazardous waste within their territories. In addition, Article 32 requires FPIC for "the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." If one compares the language of Articles 19 and 32, on the one hand, to Articles 10 and 29, on the other, it could be argued that the first two articles simply contemplate a good faith consultative and cooperative process "in the best effort, but not necessarily" to obtain indigenous peoples' consent, while the latter two articles do not articulate such a process, but provide for an absolute prohibition on certain activities "unless FPIC has been obtained" (i.e. veto).⁵²⁷

Seier refers to the Canadian example, whereby Canadian aboriginal law requires such consultation processes and good faith efforts to arrive at consent. Provincial governments are under a legal obligation to meaningfully consult with aboriginal peoples with regard to proposed government measures or projects in order to determine the scope and nature of, as well as potential impacts on aboriginal peoples' rights and interests. The concerned aboriginal peoples are required to participate in and facilitate the consultation, in good faith. If it has been determined that the proposed action would "unjustifiably" impact those rights or interests, governments may: 1) adapt the proposal; 2) compensate for the rights or interests that are to be impacted and cannot be accommodated for; or 3) abandon the proposed measure or project whereby aboriginal rights or interests are so substantial and the impact of the proposed measure or project so significant that accommodation is impossible and compensation is unacceptable.⁵²⁸

During the lengthy negotiations of the UN Declaration, participatory rights were among the most contentious, largely due to the ambiguity of the definition of participatory rights.⁵²⁹ Some indigenous rights advocates regarded FPIC as a right to *veto* projects, while others argue that it is not meant to be a *veto* right, but rather a means of ensuring that indigenous peoples meaningfully participate in decisions directly impacting their lands, territories, and resources.⁵³⁰ While analyzing the provisions concerning FPIC in the UN

⁵²⁶ ILA Report, at 23.

⁵²⁷ Frank Seier, 'Free, Prior and Informed Consent' under UNDRIP: What Does it Really Mean? Right2Respect, Business and Human Rights Advisors, 2011, at 2, access at: <http://www.right2respect.com/2011/06/%E2%80%98free-prior-and-informed-consent%E2%80%99-under-the-un-declaration-on-the-rights-of-indigenous-peoples-what-does-it-really-mean/>

⁵²⁸ Ibid 5.

⁵²⁹ Davis, Megan, *supra* note 110, at 465.

⁵³⁰ Special Rapporteur James Anaya on the Rights of Indigenous Peoples, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development:

Declaration, the Expert Mechanism on the Rights of Indigenous Peoples has distinguished the requirement of FPIC into mandatory and contextual requirement. The mandatory requirement is set in Article 10 of the Declaration, which prohibits the forced removal of indigenous peoples from their lands. Additionally, Article 29 states that, “states shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.” In other cases, according to the Expert Mechanism, the requirement to obtain FPIC depends on context, including, notably, in relation to the approval of projects affecting indigenous peoples’ lands, territories and other resources, referring to Article 32 of UNDRIP. In the final report of its study on indigenous peoples and the right to participate in decision-making, the Expert Mechanism provides further clarification:

*The Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance to their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned.*⁵³¹

The analysis of the Expert Mechanism is supported by both the Inter-American Court of Human Rights, as well as the UN Human Rights Committee, both of which have recognized that, in the case of significant and large-scale negative impact on the lands and traditional way of life of indigenous peoples, mere consultation is not enough, but that their FPIC must be obtained. Therefore, it can be argued that while ILO Convention No. 169 requires “the spirit of FPIC”, the UN Declaration does in fact require the “body of FPIC”, which means that the principle of FPIC is applied in cases where interference would cause a significant negative impact on the traditional lands and ways of life of indigenous peoples. The International Law Association (ILA) has come to similar conclusions.⁵³²

Although the Declaration is not a legally binding document, it has been argued that it affirms existing customary international law.⁵³³ Others contend, quite rightfully, that it is not completely accurate to suggest that the Declaration already represents emerging customary international law.⁵³⁴ The idea behind a declaration and other non-binding

Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, UN Doc. A/HRC/13/34 (15 July 2009), para 48.

⁵³¹A/HRC/18/42, para 22.

⁵³²ILA Report, at 24.

⁵³³Anaya, J., The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era...supra note x; BartolomeClavero, The Indigenous Rights of Participation and International Development Policies, 22 Arizona Journal of International & Comparative Law, 41 (2005): 43.

⁵³⁴Davis, Megan, supra note 110, at 465; Alexandra Xanthaki, Indigenous Rights in International Law over the Last 10 Years and Future Developments, 10 Melbourne Journal of International Law 27, (2009), at 36.

instruments is that they create norms that can guide the behavior of states and ultimately this behavior may develop into customary international law.⁵³⁵

2.5.7.1. Biodiversity Protection Regime

The Convention on Biological Diversity (CBD) is a key instrument for the conservation, sustainable use, and fair and equitable sharing of benefits arising out of the utilization of genetic resources. In this regard, FPIC is a significant element of the CBD's provisions on access to genetic resources and the fair and equitable sharing of benefits. It is also essential to the implementation of the provisions of the Convention and is particularly important for indigenous and local "tribal" communities that are, for one reason or another, not recognized as indigenous, but who are practicing traditional lifestyles that are closely connected to nature.⁵³⁶

Under Article 8 (j) of the CBD, parties undertake to preserve, maintain, and promote the traditional knowledge, innovations, and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity. The Convention encourages parties to implement national legislation to protect traditional knowledge. Article 8 (j) also establishes the basis for the enhancement of the concept of FPIC, by requiring that the traditional knowledge of indigenous and local communities be used with "the approval and involvement of the holders of such knowledge, innovations and practices." Additionally, Article 8 (j) also requires that benefits arising from the application of traditional knowledge, innovations, and practices be shared equitably with the indigenous communities concerned.

The Conference of the Parties (COP) to the CBD established a subsidiary body, the Ad Hoc Open-ended Inter-sessional Working Group on Article 8 (j) and Related Provisions, to address its implementation and to develop an ambitious programme of work, which was adopted by the COP in 2000 and provides the basis for action on traditional knowledge within the framework of the Convention.⁵³⁷ Within the framework of the Convention, the Work Programme's objective is the just implementation of Article 8 (j) and related provisions at local, national, regional, and international levels. Furthermore, it aims to ensure the full and effective participation of indigenous and local communities at all stages and levels of implementation. The Work Programme on the implementation of Article 8 (j) and related provisions of the CBD emphasize the importance of FPIC and determines that: "access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices."⁵³⁸

At its sixth meeting, while implementing an element of the work programme, the COP recommended that the Working Group – in cooperation with indigenous and local communities – develop guidelines or recommendations for conducting cultural,

⁵³⁵ Anaya, J., *The Right of Indigenous Peoples to Self-Determination*, supra note x, at 184; Davis, M., at 440.

⁵³⁶ International Workshop on free, prior and informed consent and indigenous peoples (New York, 17-19 January 2005), PFII/2005/WS. 2/3: Contribution of the Convention on Biological Diversity and the Principle of Prior and Informed Consent, Secretariat of the Convention on Biological Diversity, at 1.

⁵³⁷ The Programme of Work on Article 8 (j) and related provisions is contained in the Annex to decision v/16. Decisions VI/10 and VII/16 further develop the work program. access at: <http://intranet.biodiv.org/decisions/>

⁵³⁸ Decision V/16: Article 8 (j) and related provisions of the Convention on Biological Diversity, I General Principles 5.

environmental, and social impact assessments for (any) proposed development set to take place on sacred sites (e.g. on lands or waters) occupied or used by indigenous and local communities.⁵³⁹ Based on this recommendation, the Akwé: Kon Voluntary Guidelines⁵⁴⁰ were adopted at the seventh meeting of the COP (2004). The principle of prior and informed consent is contained in paragraph 53 of the Akwé: Kon guidelines, which states:

Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities.

Article 15 of the CBD recognizes states' sovereign rights over natural resources and the authority to determine access to genetic resources rests with national governments and is subject to its national legislation. At its fourth meeting, in 1998, the COP established a panel of experts appointed by governments, composed of representatives from the private and public sectors, as well as representatives of indigenous and local communities, in order to develop a common understanding of basic concepts and to explore all options for access and benefit-sharing on mutually agreed terms, including guidelines. At its fifth meeting in 2000 the COP decided to establish the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (ABS) with the mandate to develop guidelines and other approaches for submission to the COP at its sixth meeting and to assist parties and stakeholders in addressing, among other issues, prior and informed consent on mutually agreed-upon terms.

Based on the work carried out by the Working Group on ABS, the Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization were adopted at the sixth meeting of the Conference of Parties in April 2002. The Bonn Guidelines were developed to assist parties and stakeholders in the implementation of relevant provisions of the Convention relating to access to genetic resources and benefit sharing. More specifically, they were developed to assist parties when establishing legislative, administrative, or policy measures on access and benefit sharing and/or when negotiating such arrangements.⁵⁴¹ The Bonn Guidelines address steps in the access and benefit-sharing process, such as FPIC. Specific provisions also address the prior informed consent of indigenous and local communities.

⁵³⁹ Decision V/16: Article 8 (j) and related provisions, Annex: Programme of work on the implementation of Article 8 (j) and related provisions of the Convention on Biological Diversity, Element 6. Monitoring elements.

⁵⁴⁰ Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities

⁵⁴¹ International Workshop on free, prior and informed consent and indigenous peoples (New York, 17-19 January 2005), PFII/2005/WS. 2/3: Contribution of the Convention on Biological Diversity and the Principle of Prior and Informed Consent, Secretariat of the Convention on Biological Diversity, at 2.

At its seventh meeting (2004), the COP decided to mandate the Ad Hoc Open-ended Working Group on ABS with the collaboration of the Ad Hoc Open ended Inter-sessional Working Group on Article 8 (j) and related provisions, ensuring the participation of indigenous and local communities, NGOs, industry and scientific and academic institutions, as well as intergovernmental organizations, to elaborate on and negotiate an international regime on access to genetic resources and benefit-sharing with the aim of adopting an instrument to effectively implement the provisions of Article 15 and Article 8 (j) of the Convention, as well as the three objectives of the Convention. Furthermore, it agreed on the terms of reference of the Working Group, including a list of elements for consideration in the international regime. Elements of direct relevance to prior informed consent include: measures to ensure compliance with national legislation on access and benefit-sharing; prior informed consent and mutually agreed terms consistent with the CBD; measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8 (j); the recognition and protection of the rights of indigenous and local communities over their traditional knowledge, associated to genetic resources subject to the national legislation of the countries where these communities are located.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (to the CBD),⁵⁴² adopted in 2010⁵⁴³, recognizes the interrelationship between genetic resources and traditional knowledge, as well as their inseparable nature for indigenous communities. It declares the importance of traditional knowledge for the conservation of biological diversity and the sustainable use of its components, as well as for the sustainable livelihoods of these communities.⁵⁴⁴

The Nagoya Protocol was conceived in order to respond to wide criticism concerning access and benefit-sharing provisions in the CBD. One of the most frequent of these criticisms concerning the protection afforded to Indigenous traditional knowledge, a lot of which is based on indigenous peoples' means and methods of managing natural resources. Despite positive developments, indigenous peoples in many places are still waiting for the legal protection of genetic resources that underly their traditional knowledge and the sharing of those benefits.⁵⁴⁵ Estimates for herbal products are at 60 billion dollars and are expected to climb to 5 trillion dollars by 2020⁵⁴⁶, of which very little, if any amount, is given back to local communities. Additionally, the Protocol

⁵⁴² After six years of negotiation, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity was adopted at the tenth meeting of the Conference of the Parties on 29 October 2010, in Nagoya, Japan. <http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>

⁵⁴³ 92 signatures, 18 ratifications. Finland has signed the Protocol 23.6.2011. <http://www.cbd.int/abs/nagoya-protocol/signatories/>

⁵⁴⁴ Preamble paragraphs. For an analysis of the Nagoya Protocol, see E. C. Kamau, B. Fedder and G. Winter, "The Nagoya Protocol and Access to Genetic Resources and Benefit Sharing: What is New and What are the Implications for Provider and User Countries and the Scientific Community?," *Law, Environment and Development Journal* 6:3 (2010): 246-263.

⁵⁴⁵ K. Koutouki, K., "Legal Aspects of Sustainable Natural Resources, Legal Working Paper Series, The Nagoya Protocol: Status of Indigenous and Local Communities," (Koutonki 2011), 4, access at: <http://cisdl.org/public/docs/legal/The%20Nagoya%20Protocol%20-%20Status%20of%20Indigenous%20and%20Local%20Communities.pdf> (accessed 1 January 2012).

⁵⁴⁶ Shahid Alikhan. *Socio-economic Benefits of Intellectual Property Protection in Developing Countries* (Geneva: WIPO, 2000), 83.

establishes the right of indigenous peoples and local communities to fair and equitable benefit-sharing arising from the utilization of their genetic resources and traditional knowledge by third parties.⁵⁴⁷ While Article 8 (j) of the CBD establishes the right of communities to share in the benefits arising from the utilization of their traditional knowledge, the communities' right to benefit sharing specifically arising from a third party's utilization of their genetic resources is a major step forward in the Nagoya Protocol.⁵⁴⁸

The protocol also advances the concept of FPIC of indigenous peoples by stating that states are under an obligation to take measures with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources, where they have the established right to grant access.⁵⁴⁹ Furthermore, states shall ensure that traditional knowledge associated with genetic resources, held by indigenous or local communities, is accessible with the prior and informed consent or approval and involvement of these indigenous and local communities under mutually agreed-upon terms. Both requirements are coloured by the notions of "in accordance with domestic law" and "as appropriate" to facilitate states' obligation. Instead of developing new legal obligations for states, these provisions could be described as "a normative direction in which international law is heading."⁵⁵⁰ **It could, thus, be argued that because most states are bound by universal human rights norms and the UNDRIP, the Nagoya Protocol further affirms already-recognized rights and, therefore, strengthens indigenous peoples' right to FPIC.** The Protocol refers to the UNDRIP⁵⁵¹, aside from the concept of FPIC, also recognizes indigenous peoples' customary norms and means of governance. Despite the unfortunate fact that states' obligations vis-à-vis communities are often unfulfilled at the local level, the Nagoya protocol shows how environmental agreements may act as important means for enhancing indigenous peoples' rights.⁵⁵² In order for communities to secure their bio-cultural rights through the Nagoya Protocol, the gains made through successful international advocacy must be capitalized upon by the improved exercise of rights at the local level.⁵⁵³

2.5.8. FPIC in International Financial Institutions

Engagement with local communities is an indispensable part of creating large-scale projects.⁵⁵⁴ Beginning in the 1990's, the corporate community began to acknowledge that the successful engagement of local communities could play an important role in the success of projects. As a result, the term "social license" began to seep into development

⁵⁴⁷ Art. 5.

⁵⁴⁸ H. Jonas, K. Bavikatte and H. Shrumm, "Community Protocols and Access and Benefit Sharing", *Asian Biotechnology and Development Review*, 12: 3 (2010): 52.

⁵⁴⁹ Art. 6.2.

⁵⁵⁰ Jonas, Bavikatte and Shrumm, *supra* note 212, at 52.

⁵⁵¹ Preamble.

⁵⁵² Ibid 51-52.

⁵⁵³ Ibid 54.

⁵⁵⁴ See, Baker, Shalanda, H., Why the IFC's Free, Prior and Informed Consent Policy Doesn't Matter (Yet) to Indigenous Communities Affected by Development Projects, USF School of Law, Law Research Paper No. 2012-16, (2012), at 6.

parlance.⁵⁵⁵ This included the idea that financial institutions' policies concerning indigenous peoples and the adoption of FPIC would eliminate a myriad of economic risks that often accompany large-scale projects. These include project disruption as a result of civil unrest, local protests, or violence directly related to a project.⁵⁵⁶ Obtaining the FPIC of indigenous peoples prior to a project could curtail these risks, which could, in turn, positively affect the economic aspects of a project.⁵⁵⁷

2.5.8.1. World Bank

The World Bank (WB) was the first multilateral development bank to introduce an Indigenous Peoples Policy. Its first policy was adopted in 1982 as an Operational Manual Statement (OMS 2.34). In 1991, the WB approved a new Indigenous Peoples Policy (OD 4.20) that had been developed in close collaboration with specialists from the International Labor Organization (ILO), who used ILO Convention No. 169 as a framework. The Operational Policy/Bank Procedures (OP/BP 4.10) on Indigenous Peoples, endorsed by the World Bank's Board of Executive Directors on May 10, 2005, retained the policy requirements of OD 4.20, meaning that Bank-financed projects are not only designed to avoid adverse impacts but are equally important for providing culturally appropriate benefits. The WB Indigenous Peoples Policy recognizes, among other things, that the distinct identities and cultures of Indigenous Peoples that remain inextricably linked to the lands that they inhabit and the natural resources that they depend upon to survive. The policy establishes processing requirements that include: screening, social assessment, consultation with communities involved, preparation of a plan or framework, and disclosure. It also requires the borrower to seek the broad community support of Indigenous Peoples through a process of FPIC before deciding to develop any project that targets or affects Indigenous Peoples.⁵⁵⁸

OP/BP 4.10 strengthens requirements in the following areas:

- Reflecting Board discussions on the Extractive Industries Review (EIR) on August 3, 2004 and the Management Response to the EIR, the revised policy affords project-affected Indigenous Peoples a stronger voice through a process of FPIC. The Bank will provide project financing only where FPIC results in broad community support;
- The Bank will not agree to the physical relocation of Indigenous Peoples communities' if they have not provided their broad support for it; and
- The commercial development of indigenous peoples' cultural resources and knowledge is conditioned upon their prior agreement to such development.
- The policy revision included consultations both within and outside the Bank. Some of the above mentioned changes address the concerns of indigenous peoples and NGOs. However, there are four issues where the revised policy did not fully

⁵⁵⁵ See Lisa J. Laplante and Suzanne A. Spears, Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector, 11 Yale Human Rights & Development Law Journal 69, 78 (2008).

⁵⁵⁶ See Michael B. Likosky, Mitigating Human Rights Risks Under State-Financed and Privatized Infrastructure, 10 Ind. J. Global Legal Stud. 65, 57 (2003).

⁵⁵⁷ See Lisa J. Laplante and Suzanne A. Spears, Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector, 11 Yale Human Rights & Development Law Journal 69, 71 (2008).

⁵⁵⁸ OPCS Working Paper at IX.

meet the expectations of some external stakeholders (such as some umbrella Indigenous Peoples' organizations, as well as human rights advocacy NGOs):

- *The recognition of self-identification as the principal criterion for determining indigenous status.* The policy gives greater weight to the self-identification criterion, but does not call for it as a principal criterion because it is difficult to apply in practice.
- *The recognition of indigenous peoples' right to FPIC regarding development projects affecting them.* The policy requires the borrower to conduct FPIC and to seek their broad community support in deciding whether to proceed with the project.
- *The full recognition of indigenous peoples' customary land rights.* In projects where activities are contingent on establishing legally recognized rights to Indigenous Peoples' lands and territories, the policy requires the borrower to set forth an action plan for the recognition of such rights.
- *Prohibition of the physical relocation of indigenous peoples.* The policy does not prohibit the physical relocation but requires the borrower to explore alternative project designs to avoid physical relocation, and when not feasible, to seek broad support of the affected communities as part of the free, prior and informed consultation process.⁵⁵⁹

While the WB does not require FPIC, its new policy on indigenous peoples (OP 4.10) requires the broad support of the indigenous community through culturally appropriate and collective decision-making processes subsequent to meaningful and good faith consultation and "informed participation" at each stage and throughout the life of the project. Without such support the Bank will not proceed to process the project.⁵⁶⁰ The Final Report of the World Bank's Extractive Industries Review concluded that "indigenous peoples and other affected parties do have the right to participate in decision-making and to give their free, prior and informed consent throughout each phase of a project cycle. FPIC should be seen as the principal determinant of whether there is a 'social license to operate' and hence is a major tool for deciding whether to support an operation."⁵⁶¹ It is recommended that the World Bank Group (WBG) "ensure that borrowers and clients engage in consent processes with indigenous peoples and local communities directly affected by oil, gas and mining projects, to obtain their free, prior and informed consent."⁵⁶²

The current safeguard standards and policies of the WBG on indigenous peoples are inconsistent with the principles and rights embodied in the contemporary normative framework relating to FPIC.⁵⁶³ Both the WB commissioned Extractive Industry Review

⁵⁵⁹ OPCS Working Paper, at 10.

⁵⁶⁰ IBRD/IDA, Operational Policy 4.10 on Indigenous Peoples, 10 May 2004, para.1, 6 (c) and 11.

⁵⁶¹ Striking a Better Balance. The World Bank Group and Extractive Industries. The Final Report of the Extractive Industries Review, Vol. 1, December 2003, at 21.

⁵⁶² Ibid 50.

⁵⁶³ Doyle, Cathal, 'Free, Prior and Informed Consent (FPIC) – a universal norm and framework for consultation and benefit sharing in relation to indigenous peoples and the extractive sector. Paper prepared for OHCHR

(2003) and World Commission on Dams (2000) recommended that the Bank ensure that the FPIC of indigenous peoples be obtained in advance of funding large-scale extractive hydro projects. However, the Bank's Operational Policy 4.10 and the International Finance Corporation's Performance Standard No 7 substitute "free, prior and informed consent (FPIC)" with "free, prior informed consultation (FPICon)". In doing so, it removes the requirement for indigenous peoples' consent, replacing it with a vague objective of achieving broad community support.⁵⁶⁴ The Bank's ambiguity in determining "broad community support" has been raised by its own Compliance Advisor/Ombudsman.⁵⁶⁵

As noted by Doyle, the WB, as a specialized agency of the United Nations, should follow Article 41 of the UNDRIP, which requires it to "contribute to the full realization of the Declaration." To be consistent with the rights articulated in the UNDRIP, as well as the policies of other International Financial Institutions (IFIs), the WBG will have to address the shortcoming of its policies and standards by revising them to include the requirement of FPIC.⁵⁶⁶

As noted by the OPCS Learning Review, since OP 4.10 came into effect on July 1, 2005, important new policy instruments on Indigenous Peoples have been adopted at the international level. These include the concept of FPIC. UNDRIP is among these instruments. In addition, several IFIs have also adopted indigenous peoples' policies that require FPIC, including the Inter-American Development Bank (IDB) in 2006, the European Bank for Reconstruction and Development (EBRD) in 2008, the Asian Development Bank (ADB), European Investment Bank (EIB) and the International Fund for Agricultural Development (IFAD) in 2009 and the International Finance Corporation (IFC) in 2011-2012.

As the WB expands its efforts to address climate change, it notes that indigenous peoples are extremely vulnerable to the impacts of climate change, given that they often live in environmentally sensitive areas (e.g. the Arctic region, tropical forests, coastal zones, mountains, deserts, etc.), and often depend primarily on their surrounding biodiversity for subsistence as well as cultural survival. At the same time, indigenous peoples hold traditional knowledge that may be critical to climate change adaptation.⁵⁶⁷ The WB promises to build on indigenous peoples' knowledge when assisting countries in developing strategies to adapt to changing environmental patterns and conditions. It will also work to address the specific needs of indigenous peoples communities in dealing with climate change.⁵⁶⁸ Furthermore, the WB acknowledges that lessons from WB projects

Workshop on Extractive Industries, Indigenous Peoples and Human Rights, Moscow, 3rd-4th December 2008, at 7.

⁵⁶⁴MacKay, Fergus, 'The Draft World Bank Operational Policy 4.10 on Indigenous Peoples Progress or more of the same?', 22 (Spring 2005) 1 Arizona Journal of International and Comparative Law 81.

⁵⁶⁵Office of the Compliance Advisor/Ombudsman (CAO) IFC and MIGA, World Bank Group Advisory Note 'IFC's Policy and Performance Standards on Social and Environmental Sustainability and Disclosure Policy, Commentary on IFC's Progress Report on the First 18 Months of Application', December 17, 2007, at 3, available at: <http://www.cao-ombudsman.org/howwework/advisor/documents/CAOpblicstatementIFCperformancestandards121707.pdf>.

⁵⁶⁶Doyle, Cathal (2008), *supra* note 225, at 7.

⁵⁶⁷World Banks' Webpage. Access at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINDPEOPLE/0,,contentMDK:20432643~menuPK:906311~pagePK:210058~piPK:210062~theSitePK:407802,00.html>.

⁵⁶⁸Ibid.

involving indigenous peoples directly confirm that economic development without respecting indigenous peoples norms, cultures, and traditions cannot be sustainable. Poverty reduction efforts, must thus address the social, cultural, and environmental dimensions of development, as well as the economic ones.⁵⁶⁹

2.5.8.2. International Financial Corporation (IFC)

The International Finance Corporation (IFC), a member of the WBG, recently developed (2011-2012) Performance Standards on Environmental and Social Sustainability.⁵⁷⁰ These require that the client obtain the FPIC of the affected indigenous communities with regard to project design, implementation, and expected outcomes.⁵⁷¹ The Performance Standards maintain that, although there is no universally accepted definition of FPIC, for this purpose, it refers to good faith negotiation between the client and the affected indigenous community, whereby the client must document: the mutually accepted process between the client and affected community; and evidence of agreement between the parties as the outcome of the negotiations. FPIC does not, according to Performance Standards, necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.⁵⁷²

Prior to adopting the changes in 2011, Performance Standard 7 on Indigenous Peoples, adopted in 2006, provided that projects financed with the support of the IFC engage in FPIC with indigenous peoples who were in danger of being negatively impacted.⁵⁷³ At the time, this policy lagged behind many progressive developments emerging within the industry, such as at the Inter-American Development Bank,⁵⁷⁴ and was faced with the criticism by the civil society.⁵⁷⁵ An IFC report (2009) on the application of FPIC noted that, “ongoing submissions from NGOs indicated that they will urge IFC to mainstream human rights in the [Performance Standards]”, and that “in the light of the 2007 United Nations General Assembly adoption of the Declaration on the Rights of Indigenous Peoples, ‘advocacy groups expect multilateral development institutions to adopt a ‘consent’ standard for projects dealing with indigenous peoples.’”⁵⁷⁶ A broad

⁵⁶⁹ Ibid.

⁵⁷⁰ On May 12, 2011, the board of the IFC voted to amend the IFC’s Performance Standards on Social and Environmental Sustainability, to incorporate the principle of free, prior and informed consent for indigenous peoples, International Finance Corporation, Update of IFC’s Policy and Performance Standards on Environmental and Social Sustainability. The policy became effective for projects initiated after January 1, 2012.

⁵⁷¹ International Finance Corporation (IFC), Performance Standards on Environmental and Social Sustainability, January 2012, Para 11. access at: http://www1.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES

⁵⁷² Ibid para 12.

⁵⁷³ International Finance Corporation, International Finance Corporations’s Performance Standards on Social & Environmental Sustainability 29 (30 April, 2006).

⁵⁷⁴ For instance, in 1998 the Inter-American Development Bank’s policy on resettlement required the informed consent of indigenous peoples as a condition of resettlement. Inter-American Development Bank, Involuntary Resettlement Operation Policy and Background Paper 3 (October 1998).

⁵⁷⁵ Lehr, Amy, K. and Smith, Gare, A., Implementing a Corporate Free, Prior and Informed Consent Policy: Benefits and Challenges, Foley Hoag, (6 July 2010), at 15.

⁵⁷⁶ International Finance Corporation, IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information: Report on the First Three Years of Application (July 29, 2009), at 31.

reading of FPIC would give indigenous communities a veto power over projects. However, this view is not supported by the IFC. According to Guidance Note 7, the process of Informed Consultation and Participation and FPIC “should ensure the meaningful participation of Indigenous Peoples in decision-making, focusing on achieving agreement while not conferring veto rights to individuals or sub-groups, or requiring the client to agree to aspects not under their control.”⁵⁷⁷ Such collective “community consent” should be derived from the group of affected communities as a whole, representing their view vis-à-vis the proposed development. Thus, an FPIC agreement captures affected communities’ broad agreement on the legitimacy of the engagement process and the decisions made.⁵⁷⁸

Despite its progressive nature, IFC standards do not clearly establish a veto right for indigenous peoples. Similar to the UNDRIP, a requirement of FPIC leaves room for modest interpretation. As noted by Baker, the IFC requirement could be interpreted as a consultation “plus” model of consent.⁵⁷⁹ **It is, thus, important to follow human rights monitoring bodies’ interpretation regarding FPIC, according to which a mere consultation is not enough in large-scale projects that may significantly affect indigenous peoples and where FPIC is required. Finland should take a position in ensuring that FPIC is not watered down into “good faith negotiations”, but help ensure a serious and firm attempt at an agreement. In large-scale projects that may significantly harm indigenous peoples’ traditional lands and way of life, FPIC should mean a unilateral right to give or withhold consent.**

2.5.9. Conclusion and Recommendations: What is the Current Legal Status of FPIC?

The concept of FPIC has to be understood in light of international developments concerning indigenous peoples’ human rights. In the realm of general human rights, it has developed as a part of the right to culture (universal) and the right to property (Inter-American). Due to indigenous peoples’ close connection to their traditional lands and natural resources, human rights monitoring bodies have responded to indigenous peoples’ persistent call to recognize them as peoples rather than minorities. Both, the UN Human Rights Committee, as well as the Inter-American Court of Human Rights, have started to apply the right to self-determination (its natural resource aspect and effective participation aspect) to indigenous peoples. Both of these monitoring bodies have also adopted the concept of FPIC. According to human rights law, indigenous peoples have to be consulted in good faith. In the case of large-scale or significant interference of their traditional lands and livelihoods, the FPIC of indigenous peoples is required.

This new standard was accepted after the adoption of the UNDRIP, but is not binding in a strictly legal sense. However, it seems to have immediate and powerful effects on the development of legally-binding human rights law. The government of Finland has fully supported the UN Declaration, ratified the CCPR, and accepted the Optional Protocol. **Finland should, thus, acknowledge the principle of FPIC in its policies toward indigenous peoples and interpret it according to the guidelines of the UN Human Rights Committee. As discussed, FPIC is also evolving in the biodiversity**

⁵⁷⁷ International Finance Corporation, Guidance Note 7 Indigenous Peoples, 9 (January 2012), at 9.

⁵⁷⁸ Ibid 11.

⁵⁷⁹ Baker, S.H. (2012), a 21-22.

protection regime. To date, Finland has committed itself to both the CBD, as well as the Nagoya Protocol. Finland has also been active in establishing a national working group on Article 8 (j) on indigenous peoples' rights and was the first state to adopt the Akwé:Kon Guidelines in a testing case in the Hammastunturi-area in Finnish Lapland. In line with these actions, Finland should support the adoption of the FPIC in the implementation processes of the Biodiversity Convention and Nagoya Protocol.

FPIC is also emerging in the policies of international financial institutions. The World Bank has revised its indigenous policies prior to the adoption of the UN Declaration. There is also growing pressure for the World Bank, and other development banks, to shift from "informed consultation" to "informed consent". The IFC, for example, has already formally endorsed FPIC in its new policy. Finland should, thus, strongly push for such financial institutions to stabilize their indigenous policies and accept FPIC, which is necessary in cases where indigenous peoples' traditional and land-based lifestyles may be significantly harmed. Aside from economic benefits, financial institutions should commit to the protection of the universal human rights of indigenous peoples on the basis of justice. The best results will always be achieved when there is strong community support for a project.

Indigenous peoples should have a permanent seat, represented by the UN Permanent Forum on Indigenous Issues, in the UNFCCC process. Rights to land, culture, and an evolving right to self-determination of indigenous peoples, and the right to FPIC justify the strengthened position of indigenous peoples in climate change regulation, mitigation and adaptation processes. Indigenous peoples, recognized as one of many vulnerable groups, have been guaranteed strong participatory rights in international human rights instruments. Consequently, indigenous peoples can bridge the gap between human rights and environmental issues and, thereby, act as a driving force in adopting HRBA at the UNFCCC. Finland should, thus, urge countries with indigenous peoples who do not yet actively support their participation in UNFCCC processes (as a part of their national delegations) to do so. In line with this recommendation, Finland serves as a good example when ensuring that the Saami peoples' perspectives are accounted for in climate change processes.

2.6. Women's Rights in International Law

2.6.1. Gender and Climate Change

Systemic environmental degradation and gender inequality go hand in hand.⁵⁸⁰ Gender equality is fundamental to human development. Nonetheless, the impact of climate change highlights gaps (e.g. higher levels of poverty, extensive responsibilities of caring for others, domestic violence, and traditional women's occupations) that determine how women are affected in existing social norms, traditional roles, and various power structures.⁵⁸¹ There are four particular factors that influence women's mitigative and adaptive capacities: living standards, lack of access to resources, land and ownership rights, as well as opportunities for participation. The poor – who primarily live, but by no means exclusively, in developing countries – often lack the resources and opportunities to address climate change's disproportionate impacts.⁵⁸² Of the poor, living on less than a dollar per day, 70 per cent are women and despite the fact they work two thirds of the world's working hours, they only receive 10 percent of the world's income.⁵⁸³ Consequently, the context of women's roles among the poorest will result in them bearing a substantial adaptation burden.

Building on its 2005 Report, which stated that gender is “one of the world's strongest markers for disadvantage”⁵⁸⁴, the 2007 Human Development Report noted that climate change is likely to magnify existing patterns of gender inequality. Women are disproportionately impacted by climate change for two reasons: 1) due to historical inequalities; and 2) due to their dependence on sectors and resources that are set to

⁵⁸⁰ The correlation between wealth, climate change resiliency, and gender equality is not new. Countries that are particularly vulnerable to climate change also have a tendency of being poorer with a larger gender gap. Meanwhile, countries with high environmental performance rank high with regard to gender equality and are also among the richest in the world. This is, for instance, indicated by studies produced by the Yale Centre for Environmental Law and Policy's Environmental Performance Index and the World Economic Forum's Global Gender Gap Report.

⁵⁸¹ Schalteck, Liane. “Gender and Climate Finance: Double Mainstreaming for Sustainable Development,” (2009); Schalteck, Liane. (2012) “Democratizing Financing for Sustainable Development: Gender Equality is the Key”, Heinrich Boell Stiftung North America, 136, access at: http://www.boell.org/downloads/Schalteck_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

⁵⁸² There is, thus, a need to link women's access to and control over resources. Aguilar, Lorena. “Establishing the linkages between Gender and Climate Change Adaptation and Mitigation”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge, 173.

⁵⁸³ It must be underlined that 1.4 billion of the world's poorest people are women. World Bank 2011, UNDP HDR 2011, Perch 2011, OECD 2008, Schalteck 2009, WHO and GGCA 2009.

World Bank “*World Development Report 2012 – Gender Equality and Development*” (2011); Food and Agriculture Organisation (FAO), *The state of Food and Agriculture* (2011); Perch, Leisa, “Mitigation of What and by What? Adaptation by Whom and For Whom? Dilemmas in Delivering for the Poor and the Vulnerable in International Climate Policy,” International Policy Centre for Inclusive Growth (IPC-IG), Working Paper 79 (2011); Organisation for Economic Co-operation and Development, Gender and sustainable development, “Maximising economic, social and environmental role of women,” (2008); IPCC, Note 1, 2007; Schalteck, Liane. “Gender and Climate Finance: Double Mainstreaming for Sustainable Development,” (2009); World Health Organization, Gender, Climate Change and Health (2011); UNDP, Note 1, 2011; Social Watch, 2007 and 2008; Oxfam, 2007; Neumayer and Pluempner, 2007; and ILO, 2008.

⁵⁸⁴ Human development report 2005: international cooperation at a crossroads: aid, trade and security in an unequal world, New York: Oxford University Press], 2005.

experience intense shifts (e.g. water and agriculture).⁵⁸⁵ They face historical (e.g. social roles and impoverished status) and ongoing disadvantages in accessing economic and social resources (e.g. financing⁵⁸⁶, new technology, bargaining power, assets (land and financial resources)⁵⁸⁷, social capital, medication, and information), both in developing and developed countries,⁵⁸⁸ which makes them particularly vulnerable to climate change.⁵⁸⁹ This renders them vulnerable to, among others: domestic violence, food insecurity⁵⁹⁰, diseases.^{591 592}

Gender inequalities threaten women's resilience to climate change and may prevent their effective engagement in existing development processes, further exacerbating gender inequality.⁵⁹³ For instance, low incomes and a lack of resources affects women's bargaining power at various levels – within households, in communities (especially with regard to indigenous communities), as well as nationally, regionally, and internationally.⁵⁹⁴ While women are clearly affected by climate change, their insufficient representation in decision-making processes on climate change mitigation and adaptation further exacerbate their vulnerability.⁵⁹⁵ This is, in part, because they receive less education and training. Furthermore, lack of resources affects their bargaining power at multiple levels – within

⁵⁸⁵ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 8.

⁵⁸⁶ This includes easy and adequate access to funds to cover weather-related losses or adaptation technologies. World Bank 2011, UNDP HDR 2011, Perch 2011, OECD 2008, Schalatek 2009, WHO and GGCA 2009.

⁵⁸⁷ Women tend to possess fewer assets and depend more on natural resources for their livelihoods. Food and Agriculture Organisation (FAO), *The State of Food and Agriculture* (2011).

⁵⁸⁸ See Human development report 2007/2008: fighting climate change: human solidarity in a divided world. New York: United Nations Development Programme (2007).

⁵⁸⁹ Stephan Klasen. Gender, growth and adaptation to climate change. In UNDP (ed.) *Powerful Synergies: Gender equality, economic development and environmental sustainability*. New York: UNDP (2012), 60-61.

⁵⁹⁰ World Bank 2011, UNDP HDR 2011, Perch 2011, OECD 2008, Schalatek 2009, WHO and GGCA 2009. World Bank "*World Development Report 2012 – Gender Equality and Development*" (2011); Food and Agriculture Organisation (FAO), *The state of Food and Agriculture* (2011); Perch, Leisa, "Mitigation of What and by What? Adaptation by Whom and For Whom? Dilemmas in Delivering for the Poor and the Vulnerable in International Climate Policy," International Policy Centre for Inclusive Growth (IPC-IG), Working Paper 79 (2011); Organisation for Economic Co-operation and Development, Gender and sustainable development, "Maximising economic, social and environmental role of women," (2008); IPCC, Note 1, 2007; Schalatek, Liane. "Gender and Climate Finance: Double Mainstreaming for Sustainable Development," (2009); World Health Organization, Gender, Climate Change and Health (2011); UNDP, Note 1, 2011.

⁵⁹¹ Like most marginalized groups, women are also more susceptible to vector- and water-borne diseases (e.g. malaria), and face higher morbidity rates (e.g. access to health care). IPCC Fourth Assessment Report, 2007; UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 8; "Climate change and gender: economic empowerment of women through climate mitigation and adaptation" (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women's Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010, 5-6.

⁵⁹² Organisation for Economic Co-operation and Development, Gender and sustainable development, "Maximising economic, social and environmental role of women," (2008): IPCC, Note 1, 2007, 73.

⁵⁹³ UNDP. (2012) "Overview of linkages between gender and climate change", Gender and Climate Change Capacity Development Series (Africa), Training Module 1; Habtezion, Zerisenay. (2011) "Gender and Climate Change Africa", Policy Brief 1, access at: <http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Environment/Gender%20and%20Climate%20Change%20Policy%20Brief%201%20Final.pdf> (last accessed: 26 July 2013).

⁵⁹⁴ Stephan Klasen. Gender, growth and adaptation to climate change. In UNDP (ed.) *Powerful Synergies: Gender equality, economic development and environmental sustainability*. New York: UNDP (2012), 60-61.

⁵⁹⁵ Globally, only 8 percent of cabinet members and 19 percent of parliament members are women. Furthermore, women make up 17% of all seats in parliaments across the globe.

households, in communities (especially with regard to indigenous communities), as well as nationally, regionally, and internationally.⁵⁹⁶

This is especially the case when women are dependent on natural resources, which are sensitive to climate variability (e.g. droughts). For example, climate-induced crop failure may place the food security of an entire population at risk.⁵⁹⁷ Consequently, lack of access to and control over resources not only affects women, but also their ability to ensure nutrition and care for their children.⁵⁹⁸ More than anything else, women often lack land and ownership rights for their means of production, technology, finances, information and training (e.g. with regard to climate adaptation or disaster prevention).⁵⁹⁹ Although they predominate in world food production (at 50 to 80 percent), women own one percent of the world's property.⁶⁰⁰

Slow-onset change (e.g. droughts⁶⁰¹), for example, requires women and girls to travel long distances to secure water and fuel wood, thus leaving them vulnerable to physical attacks and harassment.⁶⁰² Natural disasters, on the other hand, are also discriminatory.⁶⁰³ Disaster warnings, for example, often take place in public spaces to which women lack access.⁶⁰⁴ Alternatively, women may be unable to read information regarding safety measures.⁶⁰⁵ Furthermore, a 2007 study undertaken by the London School of Economics, which analyzed disasters in 141 countries between 1981 and 2002, and provided evidence that gender differences with regard to deaths from natural disasters are

⁵⁹⁶Stephan Klasen. Gender, growth and adaptation to climate change. In UNDP (ed.) *Powerful Synergies: Gender equality, economic development and environmental sustainability*. New York: UNDP (2012), 60-61.

⁵⁹⁷ For example, in Keur Moussa, Senegal, erosion decreased access to water, flooding land that was used for sowing crops and, in turn, leading men and women to migrate to cities. Consequently, women's organizations helped control erosion by building crescent-shaped canals that retained water, recovered croplands, and improved agricultural output. In Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 55-56; "Climate change and gender: economic empowerment of women through climate mitigation and adaptation" (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women's Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010, 5-6.

⁵⁹⁸ For example, in Liberia, women account for 80% of labour in [the] agriculture sector, which is highly vulnerable to climate change. Twitter Chat with Sienna Abdul-Baki, Gender Focal Point, Ministry of Gender and Development for Liberia.

⁵⁹⁹ Consequently, with regard to women and climate change, a focus must be placed on the following issues: funding, technology transfer, and capacity-building. (see Rodenberg 2009: 11)

⁶⁰⁰ Word Bank, Note 7, 2011; FAO, Note 4, 2011; Leisa Perch, *Mitigation of What and by What? "Adaptation by Whom and for Whom? Dilemmas in Delivering for the Poor and the Vulnerable in International Climate Policy,"* International Policy Centre for Inclusive Growth (IPC - IG), Working Paper 79 (2011); Organisation for Economic Co-operation and Development, *Gender and sustainable development, "Maximising the economic, social and Environmental role of women,"* (2008); IPCC, Note 1, 2007; Liane Schalatek, "Gender and Climate Finance: Double Mainstreaming for Sustainable Development," (2009); World Health Organization, *Gender, Climate Change and Health* (2011).

⁶⁰¹ The definition of droughts as a slow-onset hazard is still contested in climate change discourse. See: http://www.twinside.org.sg/title2/climate/briefings/bangkok04/Loss_and_damage_BP3.pdf

⁶⁰² UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 8.

⁶⁰³ *Gender and climate change*. (2009) Copenhagen: Nordic Council of Ministers, 35.

⁶⁰⁴ "Climate change and gender: economic empowerment of women through climate mitigation and adaptation" (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women's Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010. (Rodenberg 2009: 30). (5-6).

⁶⁰⁵ Of the 876 illiterate adults, 75 per cent are women, thus making them even more vulnerable. Social Watch, 2007 and 2008; Oxfam, 2007; Neumayer and Pluempner, 2007; and ILO, 2008.

directly correlated with women's economic rights.^{606 607} In the aftermath of disasters, women face additional challenges as disasters “may disrupt local security safety nets, leaving women and children unaccompanied, separated or orphaned due to the erosion and breakdown of normal social controls and protections.”⁶⁰⁸ This leads to the additional danger of human trafficking and sexual violence.⁶⁰⁹ Gender-discrimination may also occur with regard to food distribution both within households and during emergency relief and assistance efforts.⁶¹⁰ In addition, when women are forced to resettle due to both slow-onset and sudden disasters, they are often denied the right to buy new plots of land, leaving them with a lack of ownership titles.⁶¹¹ Such experiences are also reflected in women's poverty, lack of access to resources, as well as their experience with violence⁶¹² – issues that decision-makers must take into account when developing climate-related policies.⁶¹³

⁶⁰⁶ When examining past disasters we find that, during the 1991 cyclone disasters in Bangladesh, 90 per cent of the 140, 000 victims were women. During the 2004 Asian tsunami, 70 to 80 per cent of all deaths were women. Lastly, during Hurricane Katrina, which hit the US Gulf Coast in 2005, most persons trapped in New Orleans were African-American women, the poorest demographic group in that part of the country. The study also found that disasters the same number of men and women in societies where both have equal rights. Additionally, poor women were more likely to be direct victims than rich women. See Neumayer, Eric and Plümper, Thomas (2007) The gendered nature of natural disasters: the impact of catastrophic events on the gender gap in life expectancy, 1981–2002. *Annals of the Association of American Geographers*, 97 (3). pp. 551-566; Organisation for Economic Co-operation and Development, Gender and sustainable development, “Maximising economic, social and environmental role of women,” (2008): IPCC, Note 1, 2007, 73-74, access at: www.oecd.org/dataoecd/58/1/40881538.pdf (last accessed: 26 July 2013); In Sri Lanka because they are taught to swim and climb trees, whereas women are not; Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 29.

⁶⁰⁷ Female death rates resulting from natural disasters are four times higher than male deaths because inequity often leads men to receive preferential treatment in rescue efforts. (Ministry of Foreign Affairs, Climate Change and Gender, last accessed: 2012)

⁶⁰⁸ Challenges include heavier workloads due to clean-up work, gathering subsistence food, as well as nursing the sick. (Rodenberg 2009: 30) “Climate change and gender: economic empowerment of women through climate mitigation and adaptation” (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women's Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010. 5-6; Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal.

⁶⁰⁹ “Climate change and gender: economic empowerment of women through climate mitigation and adaptation” (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women's Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010. (Rodenberg 2009: 13) (5-6); Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 56-57.

⁶¹⁰ Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal, 20.

⁶¹¹ “Climate change and gender: economic empowerment of women through climate mitigation and adaptation” (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women's Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010. 5-6.

⁶¹² Rape, sexual assault, as well as other forms of gender-based violence often occur in refugee camps, where women are placed due to forced resettlement.

⁶¹³ Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP; “Manila Declaration for Global Action on Gender in Climate change and Disaster Risk Reduction” (22 October 2008), access at: <http://www.wedo.org/wp-content/uploads/manila-declaration-for-global-action-on-gender-in-climate-change-and-disaster-risk-reduction.pdf>.

Furthermore, a statement of the CEDAW Committee on Gender and Climate Change highlighted that, “all stakeholders should ensure that climate change and disaster risk reduction measures are gender responsive, sensitive to indigenous knowledge systems and respect human rights. Women’s right to participate at all levels of decision-making must be guaranteed in climate change policies and programmes.”⁶¹⁴ Aguilar has particularly highlighted the importance of understanding the link between women and climate change, as well as the need to improve gender provisions in international policy instruments, to mainstream gender in national and local political actions, as well develop and maintain gender sensitive financial mechanisms and instruments.

Below, the report outlines the stories of three women whose lives have been impacted by climate change.

Constance Okollet of Osukuru, Uganda

“Climate change has not been grasped by the communities because it is a scientific phenomenon which the generally illiterate, rustic peoples don’t know and don’t accept. They still superstitiously believe that it is God controlling the population by punishing them through climate change.”

-Constance Okollet of Osukuru, Uganda

In the past, Okollet⁶¹⁵ was able to reliably produce enough food for both her family’s consumption, as well as for sale. This would allow her to purchase clothing, pay for tuition fees, and health care. Various types of food – ranging from millet and maize to sweet potatoes and sorghum – were available in abundance. This was, in part, because there were two established seasons in the year. Since 2007, heavy rains and the resulting floods have forced out village residents, including Okollet and her family.⁶¹⁶

Okollet’s daily life has, thus, been impacted in the following manner: increased poverty due to reduced crop production, which has also led to a decline in the food that her family can eat; increased workload in order to obtain gather food for her family due to weather interference; difficulty in obtaining money for school tuition, clothing, medicare, and day-to-day family needs; increased insecurity due to travel distances to collect water and firewood; stolen food from gardens because there is not enough to eat. Okollet also notes that many local women are marginalized with regard to decision-making because

⁶¹⁴ The same Statement also noted that vulnerable groups, including women and indigenous women are of concern. "Statement of the CEDAW Committee on Gender and Climate Change", CEDAW, 44th session, New York, 20 July - 7 August 2009, access at: <http://unfccc.int/resource/docs/2009/smsn/igo/064.pdf>.

⁶¹⁵ Constance Okollet is a peasant farmer, Chairperson of the Osukuru United Women Network (OWNET), and a mother of seven children who is dependent on agriculture for her and her family’s livelihood. She is also a member of the Climate Wise Women (CW2), a non-governmental organization based in New York, USA. For more information on Constance Okollet’s experience, see: Okollet, Constance. “Climate change is killing our people”, The Guardian, (23 September 2009), access at: <http://www.guardian.co.uk/commentisfree/cifamerica/2009/sep/22/united-nations-climate-change-uganda>.

⁶¹⁶ Leaving everything behind, they had to move to another village only to find out that their houses, cows, goats, hens, and food had been destroyed upon their return. Produce had been washed away and vandalized. Alternatively, buildings that had not been damaged were being used for shelter. The weather has remained erratic, adversely affecting agriculture and leading to a rise in famine and poverty levels.

“[Ugandan] culture does not allow women to speak out on any issue in public, even if they are the most affected by climate change.” Despite this Okollet’s attendance at many national and international conferences has been supported by various organizations, including Climate Wise Women.⁶¹⁷

From Okollet’s perspective, climate change has impacted human rights in the following manner: loss of dignity and respect due to the inability to provide for oneself and the development of one’s family; girl’s right to education is often violated because they are married-off in order to purchase food with the dowry; girl’s rights will be violated as they are forced to drop out of school due to pregnancy (e.g. many will be lured into the sex trade in order to gain access to food); migration to urban areas, which often leads to female prostitution; domestic violence resulting from a lack of adequate food and/or exhausted women who are reluctant to participate in sexual activities. The final element has repeatedly resurfaced at conferences. In responding to such impacts, Okollet highlights the need for the following: need for advocacy and awareness-raising both at an international and national level; financing that reaches grass roots levels to implement the climate change agenda, especially for women; education; legislation that enables women to own, access, and control the land since they are the primary producers of food; technology transfer must be advanced to rural communities, including women, so that they may improve their production; addressing women’s health care needs.

Thilmeeza Hussain⁶¹⁸

“Climate change is not just an environmental issue, but definitely a human rights issue. When the rights of hundreds and thousands of people across the world are compromised because of the effects of climate change [and] the right to [the] existence of many nations [is] at risk, it cannot be anything but a human rights issue. This link is not addressed often enough and seriously enough in the meetings [that] I have participated [in].”

-Thilmeeza Hussain

Hussain has observed the effects of climate change on day-to-day life in the Maldives, where changes in the migratory patterns of fish have negatively impacted fisheries, as well as the livelihood of many people. Changes in monsoons “have often left many islands without drinking water; rainwater harvesting being the only source of available clean water as a result of the salt water intrusion and contamination of the ground water.”⁶¹⁹ Underlining the existing understanding that climate change exacerbates existing

⁶¹⁷ With their support she has attended, among others: the UN meeting on climate change (2009), Pan African Parliament meeting in South Africa (2009), COP15 in Copenhagen, COP 16 in Mexico (2010), COP 17 in Durban (2011), UN Women Conference in New York City (2012). Okollet has lectured at various US universities on climate change. She has also shared her experiences participating in national and international conferences with her community through the Osukuru United Women Network.

⁶¹⁸ Thilmeeza Hussain was appointed as the Deputy Permanent Representative to the Permanent Mission of Republic of Maldives to the UN in November 2009. Prior to assuming her position, she served as the Minister of State for Home Affairs – North Province and worked extensively with the decentralization process. She was also in charge of establishing the North Province Office, where is managed the administration of Duvaafaru, a previously uninhabited island that was settled by the Maldives after the 2004 Tsunami. Thilmeeza is also the co-founder of “Voice of Women”, a non-profit organization based in the Maldives.

⁶¹⁹ Stakeholder consultation with Thilmeeza Hussain. Interview with the author.

inequalities, Hussain has noted that women are in disadvantaged positions in coping with existing gender gaps and protecting their rights. In discussing the constraints and opportunities faced in adapting to climate change on both a local and international level, Hussain has noted that one of the biggest setbacks has been the difficulty of mobilizing resources and assisting those impacted by the slow-onset impacts of climate change. For example, in the Maldives, changes in weather patterns may lead to heavy rain seasons that might flood and, in turn, destroy communities. Nonetheless, such occurrences may not qualify as disasters, placing those who are impacted in a unique situation where they do not qualify for local assistance nor international assistance. To date, Hussain has had the opportunity to participate as an official delegate of the government of the Maldives at UNFCCC meetings, including COP and Pre-COP ministerial meetings (2010-2012). Hussain believes that there “is opportunity and room for [the] better engagement of the civil society.”⁶²⁰

Ursula Rakova

“Climate change is everybody’s business and countries the world over, especially the most industrialised nations need to take stock of their actions and fully compensate the vulnerable communities that are not able to help themselves – to rebuild their lives.”

- Ursula Rakova

Ursula Rakova⁶²¹ is responsible for organizing the re-location of the entire island community of the Carteret Islands, in the Southwestern Pacific, to the nearby safe and secure mainland of Bougainville Province, Papua New Guinea, because of the impacts of climate change. These communities must, in turn, begin new lives and find sustainable means of producing food on the mainland. The shorelines of the Carteret Islands have been eroded, pushing its community from independence to dependence on the food rations supplied by the government of Bougainville. Rakova notes that, “it is a painstaking scenario, but we have no choice.”⁶²² As a woman and islander, Rakova decided to leave the city to return to her home province of Bougainville and the islands to support her community. In Bougainville, women own and are custodians of the land, where they play a significant role, especially in unifying clans, groups, and in land mediation.” Thus, when the organization was negotiating for land to be provided for islanders to relocate, it first approached female chiefs of selected sites. Rakova notes that slow decision-making processes, at both the local and international level, act as constraints. “While these international debates [the statistics of lowering emissions, while other nations play a “wait and see” technique] are dragging on, climate change impacts and rising sea levels is fast approaching us, the most vulnerable at our door steps.” Furthermore, Rakova has noted that adaptation funds, geared toward addressing vulnerable communities’ ability to deal

⁶²⁰ Stakeholder consultation with Thilmeeza Hussain. Interview with the author. For more information on Thilmeeza Hussain, see: <http://climatewisewomen.org/?p=129>.

⁶²¹ Ursula Rakova is the Executive Director of Tulele Peisa⁶²¹, a local community organization in Papua New Guinea. For more information on Ursula Rakova, see: <http://climatewisewomen.org/?p=29>.

For an interview with Ursula Rakova by Oxfam New Zealand, see: <http://www.youtube.com/watch?v=0XDHMgqlcEU>.

⁶²² Stakeholder Consultation with Ursula Rakova. Interview with the author.

with climate change, are often slow and inadequate. To date, Rakova has participated at the side events of COPs in Bali and Cancun. While she would also like to participate in future UNFCCC meetings, this will only be possible if the government of Papua New Guinea may include CSO representation on its team. Consequently, she sees opportunities and room for the better engagement of CSOs, allowing them to both actively engage and substantially contribute to document outcomes. Rakova directly related climate change to human rights in stating that this link “places the most vulnerable communities in situations leading to [their inability] to live sustainably [on the land to which] they are culturally attached. It removes the communities[‘] dignity, value, and cultural significance [by] plac[ing] them in situations of disarray and confusion.”⁶²³ This, in turn, “often leads to cultur[al] clashes and tribal feuds, where the fittest [...] continue to play a suffocating role over the weakest and the most vulnerable.”⁶²⁴

As we can see, while both men and women may have similar priorities, the manner in which they are presented, accessed, and utilized may differ both within and across communities.⁶²⁵ The Global Gender Gap Report has, for example, highlighted that, “in countries with problematic gender inequality issues, the institutionalized suppression of intellectual, experiential, and other climate-resilience-building resources that women possess amount to about 50 percent of untapped potential (i.e. half the population).”⁶²⁶ Such situations often result from men and women’s different roles and responsibilities in their family community and society. These include social constraints with regard to mobility (e.g. their ability to swim, run, as well as their dress) and behavioural restrictions that hinder women’s ability to freely relocate with the consent of a male family member.⁶²⁷ Nonetheless, women play an important role in agriculture, food security, water supply, and health care, despite their difficulties in effectively adapting to climate change due to a lack of formal education⁶²⁸, economic poverty, food insecurity, limited access to various resources, and exclusion from policy and decision-making processes.⁶²⁹

“Gender does not explain all categories of analysis but is crucially important as it cuts across all other intersections and is the basis of the structural ordering of society.”⁶³⁰ While current rhetoric⁶³¹ holds that women are vulnerable victims or agents of change,

⁶²³ Stakeholder Consultation with Ursula Rakova. Interview with the author.

⁶²⁴ Stakeholder Consultation with Ursula Rakova. Interview with the author.

⁶²⁵ UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 13.

⁶²⁶ Samy, Kevin. “Women and Climate Change: An Opportunity to Address Gender Inequality”, *Yale Journal of International Affairs* 11: 99-101, 100.

⁶²⁷ Homelessness and forced resettlement adversely impact women’s security. Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal, 174.

⁶²⁸ Education and access to information can help empower women with regard to climate change adaptation. World Bank 2011, UNDP HDR 2011, Perch 2011, OECD 2008, Schalatek 2009, WHO and GGCA 2009.

⁶²⁹ Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal.

⁶³⁰ Reyes, Emilia and Bridget Burns, “Gender stereotypes in (international) climate change policies. How the prevalent use of ‘gender’ might perpetuate and reinforce traditional gender roles”, Presentation at Bonn Climate Change Conference, 11 June 2013.

⁶³¹ To date, gender-related arguments in climate studies have focused on gender-specific vulnerability (“women are more vulnerable by climate change impacts”, perception of climate risks, involvement in climate change, adaptation, the burden of climate change policy, and participation in decision-making (e.g. “women

altruistic stewards of the environment; individuals, in themselves, should not be instrumentalized (e.g. subjects of a function)⁶³², but should instead be regarded as subjects of rights to which states have a mandate. Under this mandate, states must acknowledge and guarantee the exercise of human rights. This is particularly important from a climate change perspective, where the roles of men and women may change due to, for instance, migration. Thus, if policies only focus on “empowering women” as agents of change, men might not have access to structures or resources for social protection or child services that are often focused on women. Thus, policies that, for example, help eradicate violence against women or include women in macro-economic policies, as opposed to solely micro-economic policies, may help diminish gaps while holding women at equal terms to men.⁶³³ **There is, thus, a need for a new social order, whereby existing gender roles are broken and the reproduction of social inequalities is prevented. Furthermore, a gendered perspective must take a broader perspective that accounts for multiple discrimination (e.g. age, disability, race, caste, and class) and, thereby, helps address the root causes of inequality, including climate change.**⁶³⁴

An understanding of these differences is vital in developing policies, programmes and projects meant to improve people’s livelihoods.⁶³⁵ Ignoring or neglecting such gender inequality not only exacerbates existing gaps and reduces the effectiveness of climate change policies, but also discourages women’s economic and social empowerment. Overcoming inequality, particularly as it pertains to women’s role in decision-making and policy-implementation, has become a focus of the international community, especially in promoting the revision of existing laws and policies, as well as processes for policy

are excluded from decision-making”). Bauriedl outlines the following gender implications of climate discourse: the vulnerability discourse (e.g. women as victims of multiple vulnerabilities), the green economy discourse (e.g. market-inclusion of women for economic growth), and the sustainable discourse (e.g. empowerment of women as local resource managers). Bauriedl concludes that , that feminist research can contribute the following beyond gender balancing: deconstruction of gender speak, critique of a gender hierarchical neoliberalization of climate change, the specification of criteria for a gender-responsive climate policy, awareness for political, scale, input and output-perspective on climate and gender, and bridging gender theory and practice. In Bauriedl, Sybille. “Social construction of climate change: How and what can feminist research contribute to gendered climate policy?”, Presentation at Bonn Climate Change Conference, 11 June 2013.

⁶³² This is, in part, because instrumentalizing women and men can lead to the ingraining of gender stereotypes, whereby policies are based on “women are useful for this” and “men are useful for this”. Providing women with cooking stoves may, for instance, reinforce gender stereotypes that women are the ones who cook.

⁶³³ An additional example would be the care economy. While women have been incorporated into the public sphere, men have not been integrated into the private sphere. For example, according to the national survey of Mexico, women are performing domestic unpaid care work that amounts to 21% of GDP (larger than 17% produced in the manufacturing industry). A key example provided by Reyes is the share of men’s work in projects regarding earth worms, where men were included and paid in relation to budgeting and infrastructure (e.g. where the worms were kept). They were formally hired, learned new skills and gained additional knowledge. Women, on the other hand, did unpaid work (e.g. caring for and feeding the worms) that further added pressure on women’s existing work. Consequently, governments must reflect on the policies proposed. In Reyes, Emilia and Bridget Burns, “Gender stereotypes in (international) climate change policies. How the prevalent use of ‘gender’ might perpetuate and reinforce traditional gender roles”, Presentation at Bonn Climate Change Conference, 11 June 2013.

⁶³⁴ Ulrike Roehr, “Gender Innovations: strategies to address gender in climate change policy”, Presentation at Bonn Climate Change Conference, 11 June 2013.

⁶³⁵ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 53.

development.⁶³⁶ Climate strategies – design and implementation – are, thus, dependent on existing vulnerabilities, including women’s capacity to effectively engage in policy-making with regard to issues, such as, natural resource management, early warning systems, and various forms of technology.⁶³⁷

2.6.2. Climate Change and Women’s Rights

“To every human rights violation there is a gender element.”

-Kofi Annan, Former UN Secretary General⁶³⁸

Legal, regulatory, and socio-economic barriers marginalize women’s issues in policy processes, lending, investment rules, as well as in the private sector. Overcoming such inequality has therefore become a focus of the international community, especially in promoting the revision of existing laws and policies, as well as processes for policy development and implementation.⁶³⁹ With the aim of ensuring a comprehensive approach for offsetting current structural inequalities throughout climate change initiatives, strategies, policies, and frameworks, Finland has consistently stressed women’s role in development and placed a particular emphasis on the equal rights of women – “natural for a country that has had a pioneering role in the struggle for gender equality for over a century.”⁶⁴⁰

Climate change and women are cross-cutting issues whose regimes can reinforce and advance one another. Principles within international agreements in both regimes may, thus, provide a foundation for addressing the gender dimension of climate change.⁶⁴¹ Women are regularly underrepresented in decision-making bodies – from government delegations to community-level planning committees – and capacity-building initiatives.⁶⁴² Climate change policy can, thus, help support their strategic interests in addition to those of men. A gender differentiated response to climate change policy very much depends on gendered norms and expectations within existing institutions mediating both men and women’s access to processes and resources. While, gender consideration should be central when drafting international environmental law, including specific provisions and matching

⁶³⁶ UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 14; Aguilar, Lorena. (2009) *Training manual on gender and climate change*. Gland, Switzerland: IUCN.

⁶³⁷ Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal.

⁶³⁸ “Gender”, Our Work, Minority Rights Group International, access at: <http://www.minorityrights.org/6861/thematic-focus/gender.html>.

⁶³⁹ Aguilar, Lorena. (2009) *Training manual on gender and climate change*. Gland, Switzerland: IUCN.

⁶⁴⁰ Vesa, Unto. (2012) “Finland in the United Nations: Consistent and Credible Constructivism”, 2 *Finnish Foreign Policy Papers*, The Finnish Institute of International Affairs, 15; UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 14; For a brief overview of Finland’s stance toward climate change and gender see, “Climate Change and Gender”, Ministry For Foreign Affairs of Finland, access at: www.forin.finland.fi/public/Print.aspx?contentid=164968&nodeid=41997&culture=en-US&contentlan=2.

⁶⁴¹ Raczek, Tracy, Eleanor Blomstrom, and Cate Owren. “Climate Change and Gender: Policies in Place”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge. 194.

⁶⁴² UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 17-18.

commitments for their practical implementation, “most of the debate related to climate change has been gender blind.”⁶⁴³

While no single international agreement encompasses all components of climate change, from human rights to disaster risk reduction, multiple principles outlined in many agreements and instruments complete the climate change picture. Whereas some agreements draw explicit links (e.g. the HFA), others are drawn out when applied, such as in the UNFCCC. **According to a 2006 UNEP report titled “Gender Plan of Action”, gender mainstreaming with regard to environmental policies has been fragmented, superficial, inconsistent, only partially implemented, and often limited to short-term interventions. Consequently, environmental policies often do not take gender considerations into account or only partially implement them.**⁶⁴⁴ There are, however, several common threads that run through these instruments – the so-called “pillars of the emerging gender and climate change framework.”⁶⁴⁵ These include: a) equal rights and access to resources (eg land and credit); b) participation in decision-making processes; c) priority to women for capacity-building and addressing risks due to exacerbated inequalities; d) just and accountable climate mechanisms; e) mainstreaming gender in all levels of climate-related programming, design, development, implementation, monitoring, and evaluation. While these instruments lack mechanisms to robustly guarantee implementation, enforce compliance or address impunity, they have normative power to shape the political, economic and development landscape by consciously and publicly placing priorities on paper.

2.6.2.1. Global Agreements and Forums

The following section will examine and analyze principal international instruments – a framework for equity, gender equality, and women’s human rights – that are in relation to climate change mitigation and adaptation. These include patterns of norm-setting, women’s access and control of social and economic resources.⁶⁴⁶

Principles of equality, including gender equality, are enshrined in major human rights instruments. These include: Article 7 of the UDHR accords protection to the rights of women, prohibits discrimination and accords equality before the law.⁶⁴⁷ Furthermore, the ICCPR prohibits discrimination (Article 2.1) and promotes the equality of women’s

⁶⁴³ Aguilar, Lorena. “Establishing the linkages between Gender and Climate Change Adaptation and Mitigation”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge. 73; Dankelman, I. (2012). *On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change*. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 48.

⁶⁴⁴ UNEP Gender Plan of Action, September 2006, 3.

⁶⁴⁵ Aguilar, Lorena. “Establishing the linkages between Gender and Climate Change Adaptation and Mitigation”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge.

⁶⁴⁶ A review of gender-based legal differences in various state economies found that 103 out of the 141 surveyed economies include a legal difference between men and women that may hinder the latter’s economic opportunities. Access and control of financial resources allow women to achieve their full potential. In most economies, especially in developing countries, women face disadvantages in accessing economic and social resources, from land to credit to technology. UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 8, 9, 13, and 17.

⁶⁴⁷ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), access at: <http://www.refworld.org/docid/3ae6b3712c.html> (last accessed: 26 July 2013).

(Article 3) rights and equality before the law (Article 2.6).⁶⁴⁸ Additionally, the ICESCR prohibits discrimination (Article 2.2), and calls for equality of women and men regarding the rights recognized by the Covenant.⁶⁴⁹

Gender-specific roles, rights and responsibilities in the context of the environment were first highlighted by scholars, like Esther Boserup, and organizations, like the Food and Agriculture Organization (FAO), with regard to agriculture and forestry, and the International Union for Conservation of Nature (IUCN), with regard to biodiversity.⁶⁵⁰ Since then, the mainstreaming of gender equality across environmental and development policies, with the aim of transforming institutional structure to be more responsive to and empower women, is increasingly recognized across various global agreements and fora. However, international environmental legal instruments have paid little attention to women's role in protecting the environment, as well as in promoting sustainable development. Many documents barely mention women or gender. Nonetheless, some international environmental instruments, such as the UNCBD, have incorporated provisions on women and gender.⁶⁵¹ These may serve as models for future law-making.

CEDAW, adopted by the UN General Assembly (on December 18th, 1979) and ratified by 187 countries, obliges parties to secure the fundamental human rights and freedoms of women by aligning policies with its provisions.⁶⁵² In its preamble, CEDAW states that State Parties are bound to guarantee men and women equal opportunities in terms of economic, social, cultural, civil and political rights.⁶⁵³ CEDAW also obliges parties to take the necessary measures to ensure that women are included in all aspects of planning for development. These include rights to participation, land ownership, resources, livelihoods, education and safety, all of which are relevant for climate change policy. Furthermore, relevant articles include:

Article 2: States Parties condemn discrimination against women in all its forms; agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women;

Article 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular...the right...to participate in the formulation of government policy and the implementation;

⁶⁴⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, access at: <http://www.refworld.org/docid/3ae6b36c0.html> (last accessed: 26 July 2013).

⁶⁴⁹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, access at: <http://www.refworld.org/docid/3ae6b3aa0.html> (last accessed: 26 July 2013).

⁶⁵⁰ Irene Dankelman (ed) (2010), *Gender and Climate Change: An Introduction*. Earthscan, London, 4.

⁶⁵¹ Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 47.

⁶⁵² Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 41; The 1979 Convention for the Elimination for all forms of Discrimination against Women (CEDAW) serves as a key link to other international human rights instruments. In UNEP. (2006) "UNEP Gender Plan of Action", 3.

⁶⁵³ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 41.

Article 8: States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their governments at the international level...”; and

Article 14.1: States Parties shall take into account the particular problems faced by rural women and the significant roles, which rural women play in the economic survival of their families. In line with Article 14, state parties have committed to promoting women’s participation in rural development and to better enable them to “participate in preparing and executing development plans at all levels” and “in all community activities.”⁶⁵⁴

Its references to gender and women’s participation in developing and implementing policies are limited.⁶⁵⁵ However, these articles, in combination with non-legally binding instruments, may be highly influential in ensuring that laws and policies respect women’s rights to equal treatment before the law and to ensure women’s participation in decision-making regarding mitigation and adaptation (e.g. the fair distribution of funds, technology, information) policies and mechanisms. Furthermore, in 2009, members of the CEDAW Committee adopted climate change as an urgent issue, particularly focusing on its differentiated impacts and calling on state parties to include gender equality as a guiding principle in drafting future international climate change agreements.

The first efforts to include a gender perspective in the sustainable development agenda began with preparations for the 1992 Rio Conference, where non-governmental organizations, including Women’s Environment and Development Organization, Development Alternatives with Women for a New Era and Worldwide, and Brazilian women’s organizations (e.g. Rede de Desenvolvimento Humano) extensively advocated to mainstream gender into various international environmental processes. These were reflected in the Women’s Action Agenda 21, which criticized existing models and development practices and served as an outline for introducing gender equality into Agenda 21 and the Rio Declaration.⁶⁵⁶ Five documents, including three major international treaties arose out of the 1992 United Nations Conference on Environment and Development (UNCED)⁶⁵⁷: the Rio Declaration, Agenda 21, the UNFCCC, the CBD and the non-binding forest principles. The UNCCD was later adopted in 1994.

⁶⁵⁴ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 41.

⁶⁵⁵ While the Fourth International Women’s Conference in Nairobi (1985) recognized women’s contributions to environmental conservation and management, it had little direct influence on the global environmental agenda. In Dankelman, I. (2012). *On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change*. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 27.

⁶⁵⁶ Women’s Action Agenda was developed and adopted by participants from 83 countries during the 1991 Miami World Women’s Congress for a Healthy Planet, organized by WEDO. In Dankelman, I. (2012). *On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change*. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 27.

⁶⁵⁷ The UNCED was the culmination of years of planning (beginning in 1989).⁶⁵⁷ This included the 1991 World Women’s Congress in Miami, Florida, where WEDO brought together over 1500 women from 83 countries to jointly work on a strategy for the 1992 UNCED. The UN Commission on Sustainable Development defined the need to achieve broad public participation putting Agenda 21 into practice. As a part

Key documents adopted at the Earth Summit were the first to recognize and reference gender in international law. The Rio Declaration, for instance, specified that, “women have a vital role in environmental management and development. Their full participation is therefore essential to achieving sustainable development.”⁶⁵⁸ In line with Rio Principle 10, women’s participation is paramount, requiring a more balanced and effective approach to international climate change negotiation processes and national climate policies.⁶⁵⁹ This is reflected in Rio Principle 20, which explicitly recognizes women as key actors in environmental protection and poverty reduction where they play a “*a vital role in environmental management and development ... and are therefore essential to achieve sustainable development.*”⁶⁶⁰ Agenda 21, adopted at the UN Conference on Environment and Development in 1992, was the first non-legally binding global blueprint for sustainable development. It called upon governments to make the “necessary constitutional, legal, administrative, cultural, social and economic changes in order to eliminate all obstacles to women’s full involvement in sustainable development and in public life.”⁶⁶¹ It was also one of the first major UN documents to recognize women as a major group, as regards sustainable development. It also comprehensively incorporated women’s roles, positions, needs and expertise throughout. The text, which references women in terms of outreach, training, health, land management, water resources and the need for gender-disaggregated data and gender-specific programme evaluation, and participation in decision-making. This is particularly highlighted in Chapter 24 on “Global Action for Women towards Sustainable and Equitable Development”, which identifies areas requiring urgent international action.⁶⁶² These areas include the elimination of “constitutional, legal, administrative, cultural, behavioural, social and economic obstacles to women’s full participation in sustainable development and public life” by increasing “the proportion of women decision-makers, planners, scientists, technical advisers, managers and extension workers in environment and development fields.”⁶⁶³ Nevertheless, this gender perspective has been unevenly upheld through most of the convention texts

of this, it recognized nine civil society groups, including women. Raczek, Tracy, Eleanor Blomstrom, and Cate Owen. “Climate Change and Gender: Policies in Place”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge.

⁶⁵⁸ “Gender issues in Agenda 21: Part I.” *The Global Development Research Center*, 2013, access at: <http://www.gdrc.org/gender/a21/agenda1.html> (last accessed: July 26, 2013).

⁶⁵⁹ “Climate change and gender: economic empowerment of women through climate mitigation and adaptation” (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women’s Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010, 74.

⁶⁶⁰ Organisation for Economic Co-operation and Development, Gender and sustainable development, “Maximising economic, social and environmental role of women,” (2008): IPCC, Note 1, 2007, 74.

⁶⁶¹ Tobin, B. and Aguilar, L. (2007). *Mainstreaming Gender Equality and Equity in ABS Governance*; and Aguilar, L. *Putting Words Into Action...Analysis of the Status of Gender Mainstreaming in the Main Multilateral Environmental Agreements*.

⁶⁶² Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 27.

⁶⁶³ See “Agenda for Change - Chapter 24.” *International Institute for Sustainable Development*, access at: <http://www.iisd.org/rio+5/agenda/chp24.htm> (last accessed: July 27, 2013); The gender perspective taken by Agenda 21 has been unevenly upheld throughout many parts of the convention’s texts and implementation mechanisms. In UNEP. (2006) “UNEP Gender Plan of Action”, 3.

(UNCBD, UNCCD, and UNFCCC) and implementation mechanisms, leading to limited success in implementing gender equity as a cross-cutting issue.

The Vienna Declaration and Programme of Action contains a section titled “The equal status and human rights of women”, which “urges the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations. ***The World Conference on Human Rights*** also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives established on global action for women towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development and chapter 24 of Agenda 21, adopted by the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 3-14 June 1992).”⁶⁶⁴ This is reflected in Article 18, which regards the human rights of women as “an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.” Furthermore, the “human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.”⁶⁶⁵

The Beijing Declaration and Platform for Action⁶⁶⁶ links sustainable development and climate change by addressing both land and credit policies, and promotes a gender perspective in development policies and programs at the local, national, and international level.⁶⁶⁷ Additionally, its Strategic Objective K⁶⁶⁸ is committed to advancing women’s involvement in environmental decision-making; integrating gender perspectives in sustainable development policies and establishing national, regional, and international impact assessments; with a particular focus on gender differentiated impacts. In 2005, at the follow-up meeting to the Beijing Platform for Action, the General Assembly stressed the need “to actively involve women in environmental decision-making at all levels; integrate their concerns and the gender perspective in sustainable development policies and programmes and consolidate or establish mechanisms at the national, regional, and international levels to assess the impact of development and environmental policies on women.”⁶⁶⁹

⁶⁶⁴ UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, access at: <http://www.refworld.org/docid/3ae6b39ec.html>, (last accessed: July 27, 2013).

⁶⁶⁵ Ibid.

⁶⁶⁶ The 1995 Fourth World Conference on Women included gender and the environment as one of its 12 critical areas of concern; Irene Dankelman, “On the Road to Sustainable Development: Promoting Gender Equality and Addressing Climate Change”, 28.

⁶⁶⁷ Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 28.

⁶⁶⁸ See the Beijing Declaration, Strategic Objective K, paras. 246-258 for more information. Access at: <http://www.un.org/esa/gopher-data/conf/fwcw/off/a-20.en>.

⁶⁶⁹ The Beijing Declaration and Platform for Action is a comprehensive global instrument focusing on gender equality and women’s empowerment. In it, the environment is outlined as one of twelve critical areas of concern. Thus, objectives should aim for the inclusion of women in environmental decision-making at all levels – the integration of their concerns and perspectives in policy-making and programmes for sustainable development, as well as to strengthening existing national, regional, and international mechanisms for assessing the impact of development and environmental policies on women. In The Fourth World Conference

The interplay of climate change and gender equality are both reflected in and present a challenge to the *Millennium Development Goals* (2000), which contain specific goals for both gender equality and environmental sustainability.⁶⁷⁰ Climate Change mitigation and adaptation efforts influence development outcomes. These include gender equality across climate and development policies.⁶⁷¹ Climate change poses multiple challenges to development, including the MDGs.⁶⁷²

- the role of inequality and poverty in a climate change context;
- the broad range of direct and indirect effects of climate change that must be addressed by various sectors, stakeholders, and disciplines;
- the urgent needs of vulnerable groups; and
- the necessity of considering gender-specific effects of climate change.

Nonetheless, the failure to consider gender dimensions across all goals will further exacerbate existing inequalities and the Declaration's 2015 targets will not be met.⁶⁷³ Environmental sustainability (goal 7), the eradication of poverty (goal 1), and gender equality (goal 3) cannot be achieved in isolation. While signatories to the *Millennium Declaration* have committed to assuring equal rights and opportunities for women and men; promoting women's empowerment as a means of preventing poverty, hunger and disease, achieving sustainable development; and ensuring the availability of new technology (e.g. information and communication technology) for all, most national reports on MDGs have failed to link environmental sustainability to gender equality and equity, future reports should consider a more integrated and holistic approach that also focuses on this important link.⁶⁷⁴ **Finland has worked extensively with the aim of realizing the outlined Millennium Development Goals.**

The Implementation Plan of the World Summit on Sustainable Development (WSSD) (2002) promotes women's equal participation in decision-making at all levels of governance, calling for the mainstreaming of gender perspectives across all policies and strategies through 2015.⁶⁷⁵ This includes the elimination of all forms of discrimination, the improvement of women's health and economic welfare by providing them with equal access to economic opportunities, land, credit, education and health-care services. "There is [also a] growing interest and optimism [in] engaging women to address disaster and

on Women: Beijing Declaration and Platform for Action. New York, United Nations, 1995; The Beijing Declaration's objectives include gender equality and the empowerment of women. It also regards the environment as a critical area. See strategic objectives K1, K2, and K3. Samy, Kevin. "Women and Climate Change: An Opportunity to Address Gender Inequality", *Yale Journal of International Affairs* 11: 99-101, 100.

⁶⁷⁰ Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 130, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

⁶⁷¹ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," Executive Summary.

⁶⁷² Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), xvi.

⁶⁷³ Ibid 77.

⁶⁷⁴ See UNEP. (2006) "UNEP Gender Plan of Action".

⁶⁷⁵ This is largely thanks to the tireless efforts of women's rights advocates. Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 42.

climate change resilience.”⁶⁷⁶ *The HFA*⁶⁷⁷, the first internationally accepted framework for Disaster Risk Reduction, links between equality and disaster risk explicit, calling for a gender perspective in DRR. Including gender considerations in warning systems and equal access to training.⁶⁷⁸

The Commission on the Status of Women (CSW), established by UN ECOSOC, has also profoundly influenced the development of human rights and gender equality policy, serving as a forum for global policy-making.⁶⁷⁹ It declared gender, and the integration of a gender perspective into environmental policies, as a key issue. This was particularly reflected in Resolution (jj) on Financing for Gender Equality and Women’s Empowerment (E/CN.6/2008/L.8) at its 52nd Session, which requested governments to “integrate a gender perspective in the design, implementation, monitoring, evaluation and reporting of national environmental policies, strengthen mechanisms and provide adequate resources to ensure women’s full and equal participation in decision-making on environmental issues at all levels, particularly on strategies related to the impact of climate change on the lives of women and girls.”⁶⁸⁰ Others include: the World Conference on Human Rights; the International Conference on Population and Development; the World Summit for Social Development; the Johannesburg Plan of Implementation.

In line with the precepts of CEDAW and Beijing, governments must ensure that women’s access to and control over key environmental resources (e.g. water and land) are protected from environmental deterioration and that women, especially in rural zones, have the opportunity to participate at all levels of decision-making, adequately reflecting women’s interests in climate change policies.⁶⁸¹ Consequently, continued gender mainstreaming is necessary across all decision-making bodies.⁶⁸² Various internal UN mandates call for gender equality and equity. UN ECOSOC Resolution 2005/31 (2005), on mainstreaming a gender perspective into all policies and programmes in the United Nations system, underlined the importance of advancing gender equality in meeting development goals, and in the application of the Beijing Platform for Action.⁶⁸³ UN Security Council Resolution 1325 (2000) on “Women, Peace and Security” called for

⁶⁷⁶ Margaret Arnold, World Bank Senior Social Development Specialist as a part of #c4climate tweets → On March 22, Connect4Climate hosted a Twitter chat with experts to discuss the role of gender in climate change adaptation and mitigation.

⁶⁷⁷ The HFA came out of the 2005 World Conference on Disaster Reduction and is a 10-year plan to make the world safer from natural hazards.

⁶⁷⁸ “Climate Change and Gender: Policies in Place”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge.

⁶⁷⁹ “In accordance with resolution 2006/9 of the United Nations Economic and Social Council (ECOSOC), the CSW identifies emerging global themes that require global and regional actions in each of its annual sessions.” Already at its 46th session in 2002, the CSW called for the integration of a gender perspective in ongoing research on the impacts of climate change on women. This research should, in turn, be observed in decision-making. Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 50-51.

⁶⁸⁰ Ibid.

⁶⁸¹ Ibid.

⁶⁸² UNEP. (2006) “UNEP Gender Plan of Action”, 3.

⁶⁸³ Resolution 2005/31 reaffirmed the 1997 Resolution E/1997/66, which called for gender mainstreaming into all aspect of the UN system, In Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 43.

women's participation in promoting sustainable peace.⁶⁸⁴ One of its primary objectives includes the realisation and protection of women and girl's human rights.⁶⁸⁵ It especially calls upon parties to ensure equal participation in and benefit from rural development, such as adequate living conditions (including housing, sanitation, electricity and water supply, transport and communications) that are impacted by climate change.⁶⁸⁶ Additionally, internal UN mandates calling for gender equality and equity, include: the Secretary-General's Bulletin ST/SGB/1999/19⁶⁸⁷; sessions of the Economic and Social Council of the United Nations (2004 and 2005); the outcome of the High-level Plenary Meeting of the sixtieth session of the General Assembly (2005 World Summit).⁶⁸⁸

2.6.2.2. The Role of Women at the UNFCCC

The international climate change regime has been slow to systematically ingrate gender into its policies and processes leading women to become an afterthought whose needs have only been addressed sporadically. Until recently, processes and mechanisms of the UNFCCC, including the Kyoto Protocol⁶⁸⁹, omitted any reference to gender issues, which is not in line with Agenda 21 or the Rio Declaration.⁶⁹⁰ However, irrespective of this, it cannot be denied that human rights, disaster risk reduction, and gender instruments (among others) have a bearing on the UNFCCC and its work.⁶⁹¹ This sentiment was expressed by the Committee on CEDAW in an official statement noting that its concern with the absence of gender consideration in the UNFCCC.⁶⁹²

⁶⁸⁴ It was reaffirmed and strengthened by Security Council Resolution 1820 (2008) to include a mechanism to report violations and to urge sanctions for violations; See "Finland's National Action Plan", UN Security Council Resolution 1325 (2000) "Women, Peace, Security", 5, access at: http://www.peacewomen.org/assets/file/finland_nap_2012.pdf (last accessed: 27 July 2013).

⁶⁸⁵ "Finland's National Action Plan", UN Security Council Resolution 1325 (2000) "Women, Peace, Security", 10, access at: http://www.peacewomen.org/assets/file/finland_nap_2012.pdf (last accessed: 27 July 2013).

⁶⁸⁶ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 11.

⁶⁸⁷ "Departmental focal points for women in the Secretariat", which includes the terms of reference for departmental focal points. In UNEP. (2006) "UNEP Gender Plan of Action", 3.

⁶⁸⁸ "At the 2005 World Summit, the international community largely turned its back on the vital roles and needs of women in the field of the environment. Sadly, this prevailing trend is also observable in the law surrounding one of the global problems that receives the greatest attention in international environmental law and policy circles: climate change." In Dankelman, I. (2012). *On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change*. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 43; (A/RES/60/1, paragraphs 58,59 and 116)

⁶⁸⁹ The Kyoto Protocol was developed with the objective of reducing GHG emissions by 5% between 2008 and 2012. It includes three flexible mechanisms "designed to reduce the costs of compliance with emission reduction targets: the Clean Development Mechanism (CDM); the Joint Implementation (JI); and Emissions Trading."

⁶⁹⁰ Gender advocates have, however, actively engaged in negotiation processes.

⁶⁹¹ Tobin, B. and Aguilar, L. (2007). *Mainstreaming Gender Equality and Equity in ABS Governance*; and Aguilar, L. *Putting Words Into Action...Analysis of the Status of Gender Mainstreaming in the Main Multilateral Environmental Agreements*.

⁶⁹² In line with this, the Committee noted that "stakeholders should ensure that climate change and disaster risk reduction measures are gender responsive, sensitive to indigenous knowledge systems and respect human rights. Women's right to participate at all levels of decision-making must be guaranteed in climate change policies and programmes." Statement of the CEDAW Committee on Gender and Climate Change (adopted at the 44th session of CEDAW 20 July to 7 August, New York 2009).

Over the years, parties to the UNFCCC have urged its Secretariat to adhere to human rights frameworks, standards, and international and national commitments to gender equality. As a result of these developments and a better understanding of the growing connection between gender and climate change, the UN Climate Change Secretariat in Bonn has appointed a gender coordinator and outlined Gender Focal Points across three UNFCCC programme areas – financial and technical support programme for Non-Annex 1 Parties; Sustainable Development Mechanism’s Programme and Adaptation; Technology and Science Programme).

At COP 7, a decision to improve the participation of women in party representation was adopted. However, its scope was limited to monitoring and the election of women to convention posts and bodies. Thanks to the strong lobbying of women’s groups, UN institutions, and female ministers, COP 11 opened up space for women to be heard. COP 13 in 2007, featured five formal side events, including gender perspectives that led delegations to recognize the importance of including women in decision-making processes. This was mirrored by the IPCC’s recognition of the role of gender as a key factor in shaping vulnerability. Furthermore, the Bali Action Plan was crucial in the promotion of gender equality. It reaffirmed that economic and social development, as well as poverty eradication and gender equality, are global priorities that should be included in UNFCCC arrangements and aligned with international agreements.⁶⁹³ Additional meetings, such as the high-level roundtable on “Gender and Climate Change”⁶⁹⁴ held by WEDO⁶⁹⁵, the Heinrich Böll Foundation (HBF), and the Council of Women World Leaders (CWWL) have also focused on the role of gender in the climate change regime.⁶⁹⁶

⁶⁹³ Statement of the CEDAW Committee on Gender and Climate Change (adopted at the 44th session of CEDAW 20 July to 7 August, New York 2009)

⁶⁹⁴ “Gender and Climate Change” was a “prelude to the United Nations Secretary General’s High-Level Event on Climate Change (New York, September 2007) and was attended by representatives of the United Nations, NGOs and officials from 60 countries. The roundtable included extensive discussions on the connection between climate change and gender; presentations from various countries demonstrating that relationship; mention of the importance of including the gender approach in all policies about climate change, especially in adaptation policies; and suggestions for specific steps to ensure that gender equity is included in decision-making processes.” In Revelo, Lorena, and Itz Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 48.

⁶⁹⁵ WEDO facilitates advocacy strategies that ensure the inclusion of women in UNFCCC processes. Its advocates, who are diverse in expertise, nationality, and engagement provide technical support to negotiators at the UNFCCC; support in integrating gender text into negotiating streams; monitor progress and impacts on national policies, programming and funds. Furthermore, WEDO has established regional and national gender and climate change advocacy positions to substantiate global positions with local expertise.

⁶⁹⁶ The meeting of the Network of Women Ministers and Leaders for Environment in 2007 was particularly noteworthy as it called upon Parties and the UNFCCC Secretariat to:⁶⁹⁶ 1) Recognize that women are powerful agents of change and that their full participation in climate change adaptation and mitigation policies and initiatives is indispensable and to ensure participation of women and female gender experts in all decisions relating to climate change; 2) Take steps to ensure that the UNFCCC acts in accordance with human rights frameworks and with national and international agreements on gender equality and equity, including CEDAW; 3) Develop a gender strategy, invest in research on climate change gender implications and establish a system of gender-sensitive criteria and indicators for governments that include national communications sent to the UNFCCC Secretariat; 4) Analyze and identify protection impacts and measures, disaggregated by gender, to deal with floods, droughts, heat waves, diseases and other environmental changes and disasters; 5) Design financial mechanisms to which women have access and which make them less vulnerable, recognizing the fact that millions of poor women who are affected by climate change live and work outside formal markets, and

The establishment of the GGCA (Global Gender Climate Alliance) also served as a turning point for linking climate change and gender at the UNFCCC. Finland has been a supporter of the GGCA since 2008 and has renewed its commitment by granting €2.6 million to a GGCA project aiming to strengthen the role of women in global climate policy (2012-2014).⁶⁹⁷ Backed by numerous UN organizations and NGOs,⁶⁹⁸ its binding opinion statements, made by relevant stakeholders at a series of activities arranged by various organizations, elicited further interest and increased awareness for the effects of climate change on women.⁶⁹⁹ At COP 14, the UNFCCC Secretariat recognized the gender dimension of climate change, stating:

*To this end we strongly advocate formulating gender inclusive policy measures in addressing climate change. We also believe that women are important actors in ensuring their communities' ability to cope with and adapt to climate change. They can be effective agents of change and are often the ones turned to in times of need and can play a role in crisis situations*⁷⁰⁰

Then, in 2009, the UNFCCC formally recognized women's civil society groups as a Provisional Constituency. In addition, gendered language appeared in UNFCCC documents at COP 15 in 2009, acknowledging that, "the effects of climate change will be felt most acutely by those parts of the population that are already vulnerable owing to youth, gender, age or disability" and highlight the need for "gender equality and the effective participation of women." Furthermore, they called for "gender sensitivity and consideration in efforts on adaptation, capacity building, and deforestation."⁷⁰¹ Decisions made at the 2010 Cancún and 2011 Durban climate summits, such as initial proactive efforts to make climate fund instruments gender responsive, acknowledged the

provide women and men living in poverty with greater access to commercial mitigation initiatives such as the Clean Development Mechanism (CDM).

⁶⁹⁷ "Rahoituspäätös: Tuki Global Gender and Climate Alliancen (GGCA) hankkeelle naisten roolin vahvistamiseksi ja sukupuolinäkökulman valtavirtaistamiseksi globaalissa ilmastopolitiikassa 2012-2014 - Ulkoasiainministeriö: Kehityspolitiikka." *Ulkoasiainministeriö*, access at: <http://formin.finland.fi/public/default.aspx?contentid=241498&contentlan=1&culture=fi-FI> (last accessed: 27 July 2013).

⁶⁹⁸ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 49.

⁶⁹⁹ The GGCA aims to ensure that climate change policies, decision-making, and initiatives are gender responsive at the national and global level. Its founding partners include: the UNDP, WEDO, the UNEP, and the IUCN. Today, the GGCA has 30 partners, including UN agencies, NGOs, international organizations. The GGCA aims to: 1) Integrate the gender approach in world policies and decision-making to ensure full compliance with United Nations mandates on gender equality; 2) Ensure that mitigation and adaptation financing mechanisms take equal account of the needs of poor men and women; 3) Build capacities at global, regional and local levels to design policies, strategies and programmes on climate change that recognize gender equity. The GGCA, led by IUCN, has compiled a training manual on gender and climate change. It has also trained regional trainers from Africa, Arab States, Asia, Latin America and the Caribbean, and oriented over 50 national delegates to the UNFCCC. Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 49.

⁷⁰⁰ *Gender and climate change*. (2009) Copenhagen: Nordic Council of Ministers, 12.

⁷⁰¹ See Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP.

importance of gender equality and women's participation.⁷⁰² Gender considerations were entrenched in the Cancún Agreement and gender was included in the decision text on the Green Climate Fund in 2011.⁷⁰³ Nonetheless, this is not an explicit requirement for the allocation of resources to programmes addressing gender inequality, women's economic and social empowerment, or gender consideration in climate change financing.⁷⁰⁴ Despite these developments and heavy lobbying, still plays a minimal role among women's organizations.⁷⁰⁵ The Doha Climate Change Conference in December 2012 adopted a decision on "Promoting gender balance and improving the participation of women in UNFCCC negotiations and in the representation of Parties in bodies established pursuant to the Convention or the Kyoto Protocol. This has been a significant step in advancing gender-sensitive climate policy and served as a "political signal to increase the number of women contracting and negotiating bodies."⁷⁰⁶

The current climate change regime largely focuses on the reduction of GHG emissions, while the gender dimension plays a smaller role in both mitigation and adaptation policies. It does not provide a legal framework nor a rights-based approach, both of which should be required in developing a balanced response.⁷⁰⁷ However, the UNFCCC *does* reference gender in its National Adaptation Plans of Action (NAPA) guide.⁷⁰⁸ Nonetheless, many of the submitted national reports only generally stress the vulnerability of women and the importance of their daily tasks (e.g. collecting water, preparing meals, etc.), but do not recognize women as agents in adaptation.⁷⁰⁹ Instead, they

⁷⁰² Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 136, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

⁷⁰³ Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 45.

⁷⁰⁴ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 9.

⁷⁰⁵ Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 44.

⁷⁰⁶ See: "Rahoituspäätös: Tuki Global Gender and Climate Alliancen (GGCA) hankkeelle naisten roolin vahvistamiseksi ja sukupuolinäkökulman valtavirtaistamiseksi globaalissa ilmastopolitiikassa 2012-2014 - Ulkoasiainministeriö: Kehityspolitiikka. "Ulkoasiainministeriö, access at: <http://formin.finland.fi/public/default.aspx?contentid=241498&contentlan=1&culture=fi-FI> (last accessed: 26 July 2013); See also: "COP 18 adopts a decision promoting gender balance in climate change negotiations. UN Women - Headquarters." *UN Women*. access at: <http://www.unwomen.org/2012/12/cop-18-adopts-a-decision-promoting-gender-balance-in-climate-change-negotiations/> (last accessed: 27 July 2013).

⁷⁰⁷ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 51.

⁷⁰⁸ It notes that, "gender equality is one of the principles included when designing the NAPA and it advises that experts – both women and men – be included on the teams working on gender questions."

⁷⁰⁹ "Some NAPAs also provide examples that show how climate change is affecting women. For example, Tuvalu reports that the reduction in the literacy rate and in girls attending school is correlated to more time being needed to collect water and firewood. In Uganda, the NAPA records an increase in the number of families that marry off their daughters at an early age to get the dowry and have more resources when droughts occur. Because their husbands tend to have several sexual partners, these girls then become exposed to sexually transmitted diseases. In Tanzania, women have had to change their productive activities because they now have to buy water to irrigate their crops."; "One of the exceptions worth mentioning is Malawi, whose NAPA recognizes gender as an important factor and stipulates that: "Several interventions are proposed that target women in highly vulnerable situations, including: (i) empowerment of women through access to microfinance

portray them as victims “without the skills that would allow them to become involved in negotiations or strategic planning.”⁷¹⁰ Oftentimes, consultations have been prepared with groups of women or women’s organization do not translate into actions that involve women on the ground. Thus, women must be directly included in both policy-making and project planning. Women still often lack entry points to share their knowledge and play a key role in addressing environmental challenges.

With regarded to delgations, between 2008 and 2012, women comprised an average of 32 per cent of national delegations and comprised 23 per cent of Heads of Delegations (per year) at the UNFCCC.⁷¹¹ In 2012, there was an average of 5 delegations without men, while an average of 34 delegations had no women.⁷¹² During this time period, women’s participation by official UN regions has ranged from (on average) 46 per cent in Eastern Europe to 21 per cent in Africa.⁷¹³ Furthermore, Women’s participation by UNFCCC Negotiating Blocks has ranged from (on average) 43 per cent with the European Union to 18 per cent at OPEC.⁷¹⁴

2.6.2.3. Women at the UNCBD

The UN CBD explicitly addresses the importance of women’s participation, it is one of the few engendered regimes in international environmental law. In its Preamble, the UN CBD recognizes “the vital role that women play in the conservation and sustainable use of biological diversity,” affirming “the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.” Throughout its development, the Convention has referenced women, especially in calling on parties to mobilize farming communities with a special reference to women and gender roles. Paragraph 13 of the Preamble recognizes “the vital role that women play in the conservation and sustainable use of biological diversity, emphasizing the need for the full participation of women at all levels of policymaking and implementation for biological diversity conservation [...]”

In 2002, the Subsidiary Body on Scientific, Technical and Technological Advice recommended that parties review the compositions of ad-hoc working groups, expert groups, as well as subsidiary bodies. In 2006, the executive secretary to the Convention appointed a gender focal point. This eventually, in cooperation with the IUCN’s Gender Office, resulted in the adoption of the “Gender Plan of Action”, which was approved by the Bureau of the Convention and presented during COP-9 in Bonn, Germany. The “Gender Plan of Action” identifies gender mainstreaming as “the primary methodology for

to diversify earning potential, (ii) ensuring easier access to water and energy sources by drilling boreholes and planting trees in woodlots, and (iii) use of electricity provided through the rural electrification programme.” Zambia also mentions that providing women with micro-credit is a priority, while Tanzania mentions that women’s groups must be strengthened to be able to support community participation.” In Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 46-47.

⁷¹⁰ Ibid.

⁷¹¹ See WEDO, (2012) "Women's Participation in UN Climate Negotiations: 2008-2012", access at: <http://www.wedo.org/wp-content/uploads/WomenUNFCCCParticipation2008-2012FINAL2013.pdf> (last accessed: 27 July 2013).

⁷¹² Ibid.

⁷¹³ Ibid.

⁷¹⁴ Ibid.

integrating a gender approach into any development or environmental effort” through the use of these strategic objectives: 1) mainstreaming a gender perspective into the implementation of the Convention and the secretariat’s work; 2) promoting gender equality in achieving the objectives of the Convention and later instruments; 3) demonstrating the benefits of gender mainstreaming in biodiversity conservation, sustainable use, and benefit sharing; and 4) increasing the effectiveness of the Secretariat of the UN CBD. Since its adoption, the Secretariat has developed technical guidelines for mainstreaming gender into National Biodiversity Strategies and Action Plans. Furthermore, in 2010, the COP requested that the “secretary cooperate in efforts to develop clear indicators to monitor progress within the broader international community; and calling for gender mainstreaming in all programmes of work under the Convention.”

The Programme of Work on the Implementation of Article 8(j) and related Provisions of the UNCBD:

As already mentioned with regard to indigenous peoples, Article 8(j) focuses on traditional knowledge, innovations, and practices, calls for gender representation with regard to the selection and funding of workshop participants. It also focuses on the “[f]ull and effective participation of women of indigenous and local communities in all activities of the programme of work.” The programme of the working group to implement article 8(j), recognize “the vital role that women play in the conservation and sustainable use of biodiversity, and emphasizing that greater attention should be given to strengthening this role and the participation of women of indigenous and local communities in the programme of work.” (Decision V/16)

Furthermore, its Task 4 asks “[p]arties to develop, as appropriate, mechanisms for promoting the full and effective participation of indigenous and local communities with specific provisions for the full, active and effective participation of women in all elements of the programme of work, taking into account the need to:

- a. build on the basis of their knowledge;
- b. strengthen their access to biological diversity;
- c. strengthen their capacity on matters pertaining to the conservation, maintenance and protection of biological diversity;
- d. promote the exchange of experiences and knowledge; and
- e. promote culturally appropriate and gender specific ways in which to document and preserve women’s knowledge of biological diversity.”

The UNCBD is also the only environmental agreement mentioned in the Beijing Platform of Action’s point K:

“Encourage, subject to national legislation and consistent with the Convention on Biological Diversity, the effective protection and use of the knowledge, innovations and practices of women of indigenous and local communities, including practices relating to traditional medicines, biodiversity and indigenous technologies, and endeavor to ensure that these are respected, maintained, promoted and preserved in an ecologically sustainable manner, and promote their wider application with the approval and involvement of the holders of such knowledge; in addition,

safeguard the existing intellectual property rights of these women as protected under national and international law; work actively, where necessary, to find additional ways and means for the effective protection and use of such knowledge, innovations and practices, subject to national legislation and consistent with the Convention on Biological Diversity and relevant international law, and encourage fair and equitable sharing of benefits arising from the utilization of such knowledge, innovation and practices."⁷¹⁵

2.6.2.4. Women at the UNCCD

The UN Convention to Combat Desertification (UNCCD) serves as a comprehensive framework for the global community to pursue sustainable development goals and is one of the few international instruments to establish a link between the environment, gender equality, and social participation. This is particularly outlined in its Article 10, which states that National Programmes shall "provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resources users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes." Furthermore, the Intergovernmental Negotiating Committee on Desertification (INCD) has ensured that both women and men fully participate in preparing and implementing development activities. This is, in part, because the UNCCD is tied to local development and the eradication of poverty. Consequently, the roles, impacts, expectations, and knowledge of both women and men are considered and supported via awareness raising, training, capacity building, and education.

2.6.3. Women and Climate Change Financing

Public finance, via multilateral or bilateral climate funds or development cooperation channeled through bilateral or multilateral development institutions, is crucial to providing gender-equitable climate finance.⁷¹⁶ It is also an arena where Finland can effectively influence women's ability to participate in decision-making.

An understanding that neither ecology nor development is gender-neutral developed throughout 1990s and early 2000s, gradually recognizing that interactions between market-based economies and nature would be incomplete without the consideration of gender relations.⁷¹⁷ "Although a growing number of policies and programmes are arising to address the needs of the growing number of women business owners and their enterprises worldwide, access to finance is still the single biggest obstacle facing women entrepreneurs."⁷¹⁸ Current global climate finance frameworks – including public, private, and market-based mechanisms – mirror current global financial architecture. It is multilayered, including government and quasi-governmental institutions

⁷¹⁵ "Annex II. Legal Framework in Relation to Gender and Biodiversity." *CBD Home*, access at: <http://www.cbd.int/gender/decisions/legalframework.shtml> (last accessed: July 27, 2013).

⁷¹⁶ Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 137, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

⁷¹⁷ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 17.

⁷¹⁸ Ibid.

(e.g. UN agencies, MDBs) and comprised of market- and non-market-based mechanisms.⁷¹⁹ However, it is also often gender blind in its decision-making, suffering from gender asymmetries.⁷²⁰ For instance, numerous studies⁷²¹ have underlined pervasive inequalities between men and women with regard to women's under-representation in financial decision-making, changing incentive structures, market distortions, high administrative and transaction costs, gender gaps in economic positions, and inefficient resource allocations in financial markets due to gender-based discrimination, and access to financial services.⁷²² "Public-sector financial decision-making, such as tax and interest rate policies, can also have gender-differentiated effects that impact women's participation in financial markets."⁷²³ A review, of gender-based legal differences in world economies found that, of the 141 economies examined, 103 included at least one legal difference between men and women that hindered their economic opportunities.⁷²⁴ Thus, by including or excluding women, the framework plays a key role in either helping or hindering gender equality and women's empowerment.⁷²⁵

"[A] [g]ender-responsive approach to climate finance matters because climate change exacerbates existing inequalities including gender."⁷²⁶ However, while there has been a demand for gender equality-related funding within existing high-level meetings and processes (e.g. the 2002 International Conference for Financing for Development and the 2005 Paris Declaration on Aid Effectiveness) and governments have committed themselves politically, neither benchmarks nor tracking mechanisms for ensuring gender equality and women's empowerment have been developed.⁷²⁷ Furthermore, current mechanisms do not systematically address or integrate gender considerations, as we have

⁷¹⁹ Ibid 15-16.

⁷²⁰ Ibid 1, 15.

⁷²¹ United Nations, 2009, '2009 World Survey on the Role of Women in Development: Women's Control over Economic Resources and Access to Financial Resources, including Microfinance', Department of Economic and Social Affairs, Division for the Advancement of Women, ST/ESA/326. Retrieved 26 November 2011 from <<http://www.un.org/womenwatch/daw/public/WorldSurvey2009.pdf>> (last accessed: July 27, 2013); International Fund for Agricultural Development, 2009, 'Gender and Rural Microfinance: Reaching and empowering women – Guide for practitioners', access at: http://www.ifad.org/gender/pub/gender_finance.pdf, (last accessed: 27 July 2013); van Staveren, I., 2002, 'Global Finance and Gender'. Women in Development Europe; Baden, S., 1996, 'Gender Issues in Financial Liberalisation and Financial Sector Reform,' BRIDGE Report No. 39, June–August, Institute of Development Studies, University of Sussex, Brighton, United Kingdom; and The World Bank, 1995, 'Development in Practice: Toward Gender Equality', July, Washington, DC.

⁷²² This occurs on both the supply side (credit institutions) and the demand side (individual female borrowers as compared to individual male borrowers). "Baden argues that these transaction costs limit the net gains from financial transactions for women and make financial services less accessible and more expensive for them." Antonopoulos and Floro (1992) and Baden (1996); UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 17.

⁷²³ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 17.

⁷²⁴ (The World Bank, 2011b).

⁷²⁵ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 1.

⁷²⁶ On March 22, GGCA hosted a Twitter chat to discuss lessons learned and challenges faced in implementing a gender-sensitive approach to climate finance: why it matters, who benefits, and how we get there; Brandon Wu, @brandoncwu in #shesparks tweets (GGCA Experts Chat about a Gender Sensitive Approach to Climate Finance).

⁷²⁷ Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 130, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

seen.⁷²⁸ The climate finance regime must, thus, be structured in a manner that acknowledges and promotes women's empowerment⁷²⁹ and economic opportunities.⁷³⁰ This includes gender considerations throughout the whole project cycle – planning, implementation, monitoring, and evaluation.⁷³¹

In order to achieve their full potential to contribute, women require sufficient and equitable access to and control over financial resources.⁷³² Therefore, climate finance needs to become more inclusive and reach “women [and] girls at all levels – including in [decision making] processes [and] at the local levels.”⁷³³ Democratizing finance for sustainable development, by including various stakeholders and making climate financing instruments and processes more comprehensive and gender-responsive, requires several key actions and gender-sensitive tools.⁷³⁴ These actions and tools include: “integrating gender equality as a guiding principle and goal into funds’ design and operation; developing gender-responsive funding guidelines and criteria for each thematic funding window or instrument; gender-based criteria in fund allocation, project selection, and decision-making processes; achieving a gender-balance on all decision-making governing bodies and secretariats; ensuring funds’ staff has sufficient gender-expertise; stipulating the inclusion and use of gender indicators within a fund’s operational and allocation guidelines⁷³⁵; requiring a mandatory gender analysis and gender budget for all project and programme proposals; integrating regular gender audits of all funding allocations; establishing internal and external accountability structures such as reporting requirements and periodic evaluations; **guaranteeing women’s input and participation as stakeholders and beneficiaries during all stages of implementation**; identifying and working to decrease barriers to women’s access to credit⁷³⁶ and new technologies;

⁷²⁸ Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 138, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

⁷²⁹ "Achieving Gender Equality through Response to Climate Change: Case Studies from Local Action to Global Policy", *Addressing Inequalities: The Hearth of the Post-2015 Development Agenda and the Future We Want for All*, Global Thematic Consultation, November 2012, 15, access at: http://www.gender-climate.org/Content/Docs/Publications/FINAL_addressing_inequalities_ggca.pdf (last accessed: 27 July, 2013).

⁷³⁰ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 17.

⁷³¹ Achieving Gender Equality through Response to Climate Change: Case Studies from Local Action to Global Policy", *Addressing Inequalities: The Hearth of the Post-2015 Development Agenda and the Future We Want for All*, Global Thematic Consultation, November 2012, 15, access at: http://www.gender-climate.org/Content/Docs/Publications/FINAL_addressing_inequalities_ggca.pdf (last accessed: 27 July 2013).

⁷³² UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 9.

⁷³³ On March 22, GGCA hosted a Twitter chat to discuss lessons learned and challenges faced in implementing a gender-sensitive approach to climate finance: why it matters, who benefits, and how we get there; WEDO @WEDO_worldwide in #shesparks tweets; GGCA Experts Chat about a Gender Sensitive Approach to Climate Finance; UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 4.

⁷³⁴ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 1.

⁷³⁵ Such indicators for progress can help keep climate change and development cooperation processes accountable and transparent. In Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 129-130, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

⁷³⁶ Numerous studies have documented pervasive inequalities with regard to women's access to credit, among other financial services.⁷³⁶ For instance, the IFC has observed that, "although a growing number of policies and programmes are arising to address the needs of the growing number of women business owners and their

enhancing women's traditional knowledge; integrating and scaling up women's knowledge and skills into sustainable development and development goals focusing on "equity, environmental sustainability, poverty eradication and overall human development;" mechanisms for monitoring, reporting and verifying financing claims; reducing accountability gaps⁷³⁷; transparency and comprehensive tracking on all public financing; accounting stakeholders (e.g. women, indigenous peoples, affected communities) in national sustainable development; country-specific gender needs assessments; securing funding support to enable the engagement of women's and other community and civil society groups; developing best practices with robust social, gender and environmental safeguards that comply with existing human and women's rights conventions, labour standards and environmental laws; and acknowledging respect for country-ownership of funding plans and proposals."⁷³⁸

Furthermore, within the context of climate change, the notion of country-ownership requires a political redefinition beyond national governments to include sub-national actors as eligible counterparts, from societal groups to NGOs (e.g. women's organizations). Considering such groups within the context of country ownership presents them with opportunities to interact with and gain direct access to international financing mechanisms (e.g. via designated small grants facilities or special funding programmes for women or indigenous groups). This also requires gender-responsive climate funds to have an independent evaluation and recourse mechanism that can secure women, who have been negatively affected by climate financing, with the ability to have grievances heard and addressed.⁷³⁹

2.6.4. Women's Participation

As noted, women are often under-represented in key decision-making bodies, from government delegations to community-level planning committees. Significant progress has been made with regard to women in the context of climate change, especially when considering that they were barely mentioned prior to 2007.⁷⁴⁰ This includes gender consideration in international fora and women's participation; with a particular focus on

enterprises worldwide, access to finance is still the single biggest obstacle facing women entrepreneurs." Democratizing Financing for Sustainable Development: Gender Equality is the Key, 138.

⁷³⁷ Current OECD-DAC tracking system for official development assistance → For example, cross-referencing existing OECD Gender Equality Markers with the Rio Markers for adaptation and mitigation and extract all official development assistance projects that list both climate change and gender equality as a significant or principal focus. A cross-reference of the 2009 project database revealed that OECD countries reported 800 activities worth roughly \$1.5 billion that had both the Gender Equality Marker and Rio Marker classifications. It follows that donor countries considered approximately 17 percent of climate-relevant 2009 official development assistance expenditures to contribute to gender equality and women's empowerment.

⁷³⁸ Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 133-139, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).; Stephan Klasen. Gender, Growth, and Adaptation to Climate Change. 143; Stephan Klasen. Gender, Growth, and Adaptation to Climate Change., 143; UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 3 and 4.

⁷³⁹ Schalatek, Liane. (2012) "Democratizing Financing for Sustainable Development: Gender Equality is the Key", Heinrich Boell Stiftung North America, 139, access at: http://www.boell.org/downloads/Schalatek_DemocratizingFinancing.pdf (last accessed: 25 July 2013).

⁷⁴⁰ Stakeholder consultation with Lorena Aguilar, IUCN. Interview with the author.

the number of women in delegations, at COPs, and in meetings.⁷⁴¹ Nonetheless, gender issues go beyond numbers. “There is [a] strong patriarchal underpinning of the sustainable development and climate change policy agenda, especially mitigation.”⁷⁴² Access to and control of information, power, knowledge, participation (e.g. in REDD) are, thus, crucial.⁷⁴³ So is a HRBA with regard to gender in policy-making.⁷⁴⁴ However, such participation must occur at an equal level that guarantees women their dignity, where situations with, as Mann points out, “unskilled translators to an audience of diplomats who were busy with cocktails and private conversation” do not take place, but women are “full participants in discussions and negotiations at international climate events.”⁷⁴⁵

Women often have unequal opportunities to participate in national and international climate change policy-making processes, undermining their potential to affect current and future climate change projects and programmes.⁷⁴⁶ Limited capacities of women and women’s organizations to effectively participate include: costs (often greatest for those disadvantaged), time and human resources, discrimination, unclear relations between inputs and benefits, poor infrastructure, cultural norms, as well as lack of consensus among those consulted, may complicate and adversely affect the outcome of participatory involvement.⁷⁴⁷ Furthermore, they are often excluded from important decision and policy-making forums, capacity-building initiatives (especially with regard to mitigation) and institutions that govern them.⁷⁴⁸ In the forestry sector, for example, women are often poorly integrated into technical teams, community forest concessions, titling processes, and often hold ancillary positions, such as cooks for forestry workers.⁷⁴⁹ The enhanced participation of women is, thus, crucial in addressing the adverse impacts of

⁷⁴¹ Stakeholder consultation with Lorena Aguilar, IUCN. Interview with the author.

⁷⁴² UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 17.

⁷⁴³ Anke Stock further highlighted the importance of access to resources, land, seats, and credits for rural women, in particular. Stakeholder Consultation with Anke Stock. Interview with author.

⁷⁴⁴ Stakeholder consultation with Lorena Aguilar, IUCN. Interview with the author.

⁷⁴⁵ Stakeholder consultation with Tracy Man of Climate Wise Women. Interview with the author. Furthermore, Mann notes that they should not be “those other people to whom climate change happens”, but should instead be equal stakeholders. Furthermore, in describing the women that she has worked with, Mann notes: “The Climate Wise Women are essentially a group of women of color (except for me!). None of them doubt the linkage between the color of their skin and the severity of the climate change impacts they suffer. All of them are very articulate on the human rights piece – their simple right to existence is threatened by the impacts of climate change, so there is no disconnect between human rights and climate change.” Climate Wise Women was first established around a 2009 High Level Meeting on Climate Change convened by Ban-Ki Moon at the UN. Since then, they have participated at the CSW at the UN in 2011 and 2012 and Rio+20. Some of the women, including Ursula, Constance, Thil, Sharon and Ulamila, have attended multiple COPs as the guests of other organizations. Ulamila, on the other hand, has attended numerous intercessionals in her capacity as a negotiator for the Cook Islands.

⁷⁴⁶ UNDP (2012). Overview of linkages between gender and climate change. (Zerisenay Habtezion) Gender and Climate Change Africa. Policy brief 1; Aguilar, Lorena. “Establishing the linkages between Gender and Climate Change Adaptation and Mitigation”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge, 181.

⁷⁴⁷ UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 14.

⁷⁴⁸ Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal, 19; (Dankelman, 2002). UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 18.

⁷⁴⁹ UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 18.

climate change. Women's effective participation⁷⁵⁰ should mean their involvement at the stage of conception and design of initiatives and projects, not merely in implementation. For example, evidence provides that women play a vital role in dealing with disasters by effectively mobilizing communities in the different phases of the risk-management cycle; thus their greater involvement would enhance disaster risk management and reduction.⁷⁵¹

Finland supports the role of women in international development cooperation. The Gender and Governance Programme, supported by Finland, promotes the implementation of women's civil and political rights in strengthening their participatory opportunities at various levels of political and social decision-making.⁷⁵² As a part of its 2012 Development Policy Programme, Finland aims to support developing countries' efforts to reduce emissions and adapt to climate change, which necessitates the inclusion of gender perspectives as a cross-cutting objective. In promoting *the rights of women*, Finland has committed to and emphasises: promoting women's participation (especially women from least developed countries) in international climate cooperation and negotiations (including international environmental agreements and conferences of parties to environmental agreements).⁷⁵³ As a human rights issue, it emphasizes the strengthening of the status of women and supports their participation in decision-making. It has, thus, committed to contributing to the strengthening of women's human rights, particularly via participation in political and economic power structures in international organisations, NGOs, and development cooperation.⁷⁵⁴ This includes women's participation in environmental issues, such as the management of natural resources and land ownership, as well as the mitigation of climate change and adaptation to its consequences.⁷⁵⁵ This includes the allocation of financial and expert support for local-level activities with the purpose of promoting the status of women.⁷⁵⁶

2.6.5. Women as Agents for Change

Despite the undervaluation of women's contribution and poor representation in environmental policy-making, as outlined above, their roles are crucial to communities' adoption of survival strategies and adaptation, from design to implementation. Historically, during times of shock (from climatic to economic shocks), women's labour has adjusted to shoulder the burden. Women, who are forced to overcome obstacles and innovate, already disproportionately shoulder the burden associated with climate change.

⁷⁵⁰ Effective participation refers to possibilities for speaking, listening to and valuing individual's input, rather than simply to numerical participation (percentages-quantity).

⁷⁵¹ Carvajal-Escobar, Y, M Quintero-Angel, and M Garcia-Vargas, "Women's Role in Adapting to Climate Change and Variability" in *Advances in Geo Sciences* Issue 14, 277-280 (2008); UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 8.

⁷⁵² Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 23.

⁷⁵³ Ibid 9, 21.

⁷⁵⁴ Finland's National Action Plan", UN Security Council Resolution 1325 (2000) "Women, Peace, Security", 34, access at: http://www.peacewomen.org/assets/file/finland_nap_2012.pdf (last accessed: 27 July 2013).

⁷⁵⁵ Ibid.

⁷⁵⁶ Ministry for Foreign Affairs of Finland (14/2009)"Government Report to Parliament on the Human Rights Policy of Finland", 21.

Their agency boosts economic growth, while promoting broader development and resilience.^{757 758} This includes the ability to improve nutrition, health, and education within communities, making them critical resources and change agents whose position and operating potential should be strengthened.⁷⁵⁹ However, while women are not paid for the environmental services that they already provide (e.g. reforestation), their potential contribution to climate mitigation is also insufficiently exploited.⁷⁶⁰ Existing processes must, thus, take a more comprehensive approach, and shift their focus from women's vulnerability to agency.⁷⁶¹ How can this worldview be shifted? Women must not only be described as victims, related to vulnerability. Instead, they must be empowered as agents of change who play a key role in mitigation and adaptation processes – in mechanisms, policies, measures, tools, and guidelines within the climate debate. They must be regarded as critical actors who can help foster broader changes.⁷⁶²

Women have capacities (e.g. social networking, caring abilities, extensive knowledge of communities, management of natural environmental resources, community revitalization, high levels of risk awareness) that can help or hinder progress on issues including, among others, energy consumption, deforestation, the burning of vegetation, and disaster risk management.⁷⁶³ “We need to understand that women have intensive

⁷⁵⁷ Studies show that women, more than men, focus on social change in reducing GHG emissions. Women tend to focus more on lifestyle and social changes to reduce greenhouse gas emissions, including reducing the impact of unsustainable consumption and production patterns on the environment and promoting actions such as energy-saving and greener purchasing. Women have greater doubts than men that technological solutions alone will solve the problem of global warming and support initiatives to induce changes in personal behaviour. Organisation for Economic Co-operation and Development, Gender and sustainable development, “Maximising economic, social and environmental role of women,” (2008): IPCC, Note 1, 2007, 74; Surveys in the United Kingdom find that 75% of the women surveyed are apprehensive that actions they consider effective to mitigate climate change will not be adopted soon enough. In addition, 97% of women surveyed do not think the government is doing enough to combat climate change, and 80% fault the lack of female involvement in environmental policy-making (WEN, 2007). Similarly, in Germany, more than 50% of women compared to 40% of men rate climate change as extremely or very dangerous. Far more than the men surveyed, women tend to believe that individuals can contribute toward protecting the climate through their actions and lifestyle changes (GenaNet, 2007). In Organisation for Economic Co-operation and Development, Gender and sustainable development, “Maximising economic, social and environmental role of women,” (2008): IPCC, Note 1, 2007, 74.

⁷⁵⁸ The 2011 UNDP Human Development Report has noted that, “[b]ecause women often show more concern for the environment, support pro-environmental policies and vote for pro-environmental leaders, their greater involvement in politics and in non-governmental organizations could result in environmental gains, with multiplier effects across all the Millennium Development Goals.”

⁷⁵⁹ “Reducing gender gaps in education and employment will help promote the demographic transition that is required to boost savings, investments and per-capita incomes” in (Bloom and Williamson 1998); (e.g. Thomas 1997, Thomas 1990, World Bank 2001); Stephan Klasen. Gender, Growth, and Adaptation to Climate Change, 63.

⁷⁶⁰ “Climate change and gender: economic empowerment of women through climate mitigation and adaptation” (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women's Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010. (3)

⁷⁶¹ Margaret Arnold, World Bank Senior Social Development Specialist during the #c4climate tweets → On March 22, Connect4Climate hosted a Twitter chat with experts to discuss the role of gender in climate change adaptation and mitigation.

⁷⁶² “Population and Climate Change: Framework for UNFPA's Agenda”, UNFPA Statement, UNFPA, February 2008, access at: http://www.unfpa.org/pds/climate/docs/climate_change_unfpa.pdf (last accessed: 27 July 2013).

⁷⁶³ Aguilar, Lorena. (2009) *Training manual on gender and climate change*. Gland, Switzerland: IUCN, 18.

knowledge of their communities and use it to enhance climate resilience.”⁷⁶⁴ Their invaluable expertise, unique theoretical and practical knowledge of the environment and resources, roles and responsibilities, as well as coping mechanisms in the face of disasters, may be utilized in identifying, designing, and implementing local coping, adaptation, and mitigation strategies⁷⁶⁵ through effective procedural rights.⁷⁶⁶ They can, for instance, play significant roles in deforestation and economic growth policies. From collecting firewood to cooking to growing the bulk of staple foods, women (especially indigenous women⁷⁶⁷) possess valuable knowledge that can maintain biodiversity and facilitate more efficient responses to climate change if women’s participatory rights allowed them to effectively contribute to existing and novel decision-making processes.⁷⁶⁸ This would not only enhance context-specific knowledge, but can increase local innovation (e.g. with regard to poor infrastructure, limited mobility, etc.).⁷⁶⁹ Using women’s knowledge can build capacities and bolster the female role, therefore lessening the gender gap.⁷⁷⁰ However, their role remains largely untapped as women lack entry points where they can share their knowledge and play productive role in addressing environmental issues.

According to the FAO, closing the gender gap would generate various gains. For instance, “if women had the same access to productive resources (e.g. framing input and infrastructure) as men, they could increase yields on their farms by 20–30%, raise total agricultural output in developing countries by 2.5–4%, which could in turn reduce the

⁷⁶⁴ Maria Eugenia Genoni, Economist for the World Bank’s Poverty, Gender and Equity Group

⁷⁶⁵ “Strategies for coping with climate variations include, for example, changing cropping patterns, crops or livestock; changing diets and food preparation; adjusting energy and water use and management; adapting infrastructure (e.g. building high safe places or stronger houses); enhancing disaster preparedness, warning systems and rescue efforts; diversifying income; and migrating to less-impacted areas. When coping strategies add to communities’ resilience, they contribute to climate change adaptation.” In Dankelman, I. (2012). *On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change*. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 30.

⁷⁶⁶ UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 9; “[Women] have developed [a] cropping system adaptation strategies such as the use of diversity of crops and varieties. In Rwanda, for instance, women are reported to produce more than 600 varieties of beans; and Peruvian Aguarana women plant more than 60 varieties of manioc (FAO, 2001). These vast varieties, developed by women over the centuries, allow them to adapt their crops to different biophysical parameters including quality of soil, temperature, inclination, orientation, exposure and disease tolerance, among others.” Aguilar, Lorena. “Establishing the linkages between Gender and Climate Change Adaptation and Mitigation”, in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge. (176); (UNEP, 2004); “Climate change and gender: economic empowerment of women through climate mitigation and adaptation” (Working Paper), The Governance Cluster, Programme Promoting Gender Equality and Women’s Rights, Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ), October 2010, 75.

⁷⁶⁷ Indigenous peoples’ livelihoods are closely tied to the environment. In these communities, women often play a leading role in caring for their families and the community, as a whole. Their intellectual and social capital is especially important in protecting and managing natural resources. In UNEP. (2006) “UNEP Gender Plan of Action”, 3.

⁷⁶⁸ Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”, 10.

⁷⁶⁹ UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing,” 14.

⁷⁷⁰ Samy, Kevin. “Women and Climate Change: An Opportunity to Address Gender Inequality”, *Yale Journal of International Affairs* 11: 99-101, 100 in #c4climate tweets; On March 22, Connect4Climate hosted a Twitter chat with experts to discuss the role of gender in climate change adaptation and mitigation.

number of hungry people in the world by 12–17%.”⁷⁷¹ While male farmers often share critical information and resources, women are often excluded and have limited access to core strategic groups and knowledge hubs. Such asymmetries demonstrate a lack of collective processes for framing, validating, and monitoring adaptation processes and policy development.⁷⁷²

A gender approach – striving to analyze and understand gender-differentiated responsibilities, needs and views – helps promote an understanding of how identity determines different vulnerabilities and capabilities in adapting to climate change.⁷⁷³ Integrating such a gender approach is also helpful in designing and implementing policies, programmes and projects that lead to greater equity and equality. In particular, it may contribute to building more capacity to adapt to and mitigate climate change, insofar as it affords a clearer and more complete view of the relations that people have built with ecosystems. Existing initiatives, like Finland’s support of the GGCA, bilateral projects like the Canada-China cooperation project⁷⁷⁴, the United Nations Climate Change Secretariat initiative *Momentum for Change: Women for Results*, whose funding was awarded by the Rockefeller Foundation aims to showcase women’s active role in addressing climate change, or Climate Wise Women recognize women’s critical leadership and the advantages of their participation in developing climate change policies.⁷⁷⁵

In this regard, gender inequality can be corrected if the rights, responsibilities, and opportunities of women and men are recognized and their interests, needs and priorities are

⁷⁷¹ The State of Food and Agriculture 2010–2011: Women in Agriculture: Closing the Gender Gap for Development (2011); Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal, 20.

⁷⁷² Nellemann, C., Verma, R., and Hislop, L. (eds). 2011. Women at the frontline of climate change: Gender risks and hopes. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal., 21

⁷⁷³ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United nations development programme (UNDP), 25.

⁷⁷⁴ The Canada-China cooperation project, which is funded by the Canada Climate Change Development Fund (CCCDF) and administered by CIDA, aims to increase women’s contribution by empowering them to participate in developing and implementing climate-change-related policies and programs. Specific objectives include: 1) Increasing awareness of gender inequalities and support for women’s full participation in decision-making and technical activities associated with climate change; 2) Increasing the capacity to analyze gender equality issues relevant to the project and incorporate the results of the analysis into project activities; 3) Developing and implement appropriate targets for male/female participation in project activities, based on sex-disaggregated baseline research; the minimum expectation is 30% participation by women; and 4) Increasing the awareness, abilities, self-confidence and motivation of women working to address the issue of climate change. CIDA has also funded the Canada-China Cooperation Project in Cleaner Production, “which took aim at emissions in the pulp and paper, fertilizer, plastics, and brewing industries. The project contained a specific component to increase the participation of women as workers, technicians, and managers. Women received training in process improvement, auditing practices, monitoring of equipment, computers, and other technical aspects of their work. At the same time, gender equality awareness sessions began to transform the attitudes of both men and women. Women not only applied the new clean-production techniques at work, they started taking initiatives on their own to help clean up the environment.” This project resulted in the creation of the Women and Environment Network. See: www.cccsu.org.cn.

⁷⁷⁵ The three-year grant will support activities to inform governments, media and the public at large about the role of women in solving climate change. “UN Partners with the Rockefeller Foundation to showcase women’s role in addressing climate change”, UNFCCC Secretariat Press Release, 2012; On 8 March, International Women’s Day, Christiana Figueres hosted a Twitter chat to talk about how women can build momentum for stronger climate action. Access the storified version here: [Ow.ly/iwi36](https://ow.ly/iwi36).

taken into consideration – recognizing the diversity of different groups of women and men. Given that women possess invaluable knowledge and expertise, it is imperative that the international environmental law system upholds their full and equal participation and leadership in all areas of practice.⁷⁷⁶

2.6.6. Intersectionality: The Role of Indigenous Women

“[T]he invisibility of indigenous women in the big picture of climate change impacts and solutions is a function of the general insensitivity or blindness to gender and ethnicity perspectives and issues.”⁷⁷⁷ Women are not merely a homogenous group, but there is a substantial diversity when it comes to their roles and climate change experiences. Debates surrounding sustainable development and climate change must, thus, recognize the subject of intersectionality⁷⁷⁸ between various factors, including socio-economic status, age, race, caste, ethnicity and educational background^{779 780}. This report places an additional focus on the role of indigenous women, who often face systemic violations – deepened exclusionary and discriminatory practices present within their own peoples and in the non-indigenous majority of society – of their human rights in a climate change context, and are also often forgotten in decision-making. There are several reasons as to why indigenous women are particularly vulnerable to the impacts of climate change:⁷⁸¹

⁷⁷⁶ UNDP. (2011) “Ensuring Gender Equity in Climate Change Financing”.

⁷⁷⁷ V , Th Hien. (2011) *Indigenous women, climate change & forests*. Baguio City, Philippines: Tebtebba Foundation, xiv.

⁷⁷⁸ The concept of ‘intersectionality’ has been defined as “intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone....” In M. Eaton, “Patently Confused, Complex Inequality and *Canada v. Mossop*” (1994) 1 Rev. Cons. Stud. 203 at 229; An intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds. In C. A. Aylward, “Intersectionality: Crossing the Theoretical and Praxis Divide” (Paper Distributed at Transforming Women’s Future: Equality Rights in the New Century: A National Forum on Equality Rights presented by West Coast Leaf, 4 November 1999) [unpublished]; This approach allows the particular experience of discrimination, based on the confluence of grounds involved, to be acknowledged and remedied. In “An Introduction to the Intersectional Approach”, Ontario Human Rights Commission, access at: <http://www.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims/introduction-intersectional-approach#fn6>; Furthermore, intersectional discrimination occurs when an individual experiences discrimination on more than one ground – eg sex, race, age, disability, sexual orientation, class. These multiple levels of discrimination intersect and reinforce each other resulting in increased negative impacts on the individual. Frequently it is minority and indigenous women who experience the most disadvantages as a result of both their belonging to a minority or indigenous group and their sex. In “Gender”, Our Work, Minority Rights Group International, access at: <http://www.minorityrights.org/6861/thematic-focus/gender.html>.

⁷⁷⁹ For instance, indigenous girls tend to have lower rates of school enrolment, higher dropout rates and lower literacy levels than indigenous boys, majority girls and majority boys.

⁷⁸⁰ Dankelman, I. (2012). On The Road To Sustainable Development: Promoting Gender Equality and Addressing Climate Change. In UNDP, *Powerful Synergies: Gender Equality, Economic Development and Environmental Sustainability*, New York: UNDP, 29.

⁷⁸¹ A Guide to Indigenous Women’s Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women (2012); Ellen-Rose Kambel, Forest Peoples Programme, 7; Ethienne, Mona, and Eleanor Burke Leacock. (1980) *Women and Colonization*. Greenwood Publishing Group: 68.

Geography: Problems particularly arise because indigenous peoples often reside in regions with fragile ecosystems that are vulnerable to climate change. Indigenous women's geographical location – rural, remote areas with poor access and mobility, for instance – has implications. Furthermore, forced relocation from ancestral lands may lead to physical, sexual, and psychological violence in resettlements camps.⁷⁸²

Land Rights & Ownership: Indigenous women are directly dependent on the use, control, and ownership of and access to natural resources, and the integrity of ecosystems as their only source of subsistence and provision of food.

Resources: Access to climate change finance, technology, and technical assistance.

Participation: This includes indigenous women's exclusion from negotiations and decision-making processes (e.g. with regard to land and territorial rights).

Patriarchy: Remains dominant in both traditional and dominant cultures.⁷⁸³ Indigenous women, thus, often become invisible as rights claimants or as a social group with particular needs and should be the object of conflict mitigation policies and programmes.

Discrimination: Discrimination and racism remain prevalent despite international norms and standards that have been developed and ratified by State Parties.

In addressing their plight, indigenous women have turned to local organizations, as well as national international networks, for the protection of their human rights. A key concern includes their right to territories and natural resources, which are “inextricably linked to [their] survival, development, identity, and self-determination.”⁷⁸⁴ This is reflected in the CBD, which provides for “the participation of indigenous women in the programme of work on the implementation of Article 8(j), the CBD article on traditional knowledge of indigenous and local communities.”⁷⁸⁵ Considering that indigenous women are primarily responsible for the provision of food; water; the care of the young, elderly, and sick; as well as the transmission of IEK to younger generations; their participation is extremely important for families and communities, as a whole. Indigenous women therefore play crucial roles in strengthening existing processes.

While this would lead to the understanding that indigenous women should be fully integrated and participate in policy design and processes, international processes regarding mitigation and adaptation policies often force indigenous women to choose between “artificial boxes” – “women” or “indigenous”.⁷⁸⁶ Such grouping often occurs with the purpose of moving forward. Instead, Aguilar suggests that, since neither women nor indigenous peoples are homogenous groups, they should break out of this mode and be regarded as themes instead. Indigenous women should, for example, be engaged as a part

⁷⁸² Indigenous women and girls are particularly vulnerable to sexual violence from majority men during ethnic or religious conflicts.

⁷⁸³ While there are remnants of matriarchal and matrilineal societies among indigenous peoples, many have eroded over time.

⁷⁸⁴ Declaration of the International Indigenous Women's Forum, adopted in New York at the Beijing +5

⁷⁸⁵ "Programme of Work." *CBD Home*, Xviii, access at: <http://www.cbd.int/traditional/pow.shtml> (last accessed: 27 July 2013).

⁷⁸⁶ Aguilar, Lorena. “Linking Gender and Climate Change”, IUCN and GGCA.

of gender groups in order to avoid excuses like: “we will focus on indigenous women later.”⁷⁸⁷ Women within the indigenous movement should also serve as representatives, a particularly difficult mold to break as patriarchal systems of representation, thinking, and laws often call on women to take line with indigenous peoples’ movements.^{788 789} This is particularly the case in UNFCCC processes, where indigenous voices as a whole are often unclear and indigenous women, in particular, are heard even less.⁷⁹⁰ Moreover, as will be outlined below, a lack of representation and voice can become particularly difficult with regard to customary law and in relation to land tenure, which does not necessarily follow human rights law.

Indigenous women’s concerns have only recently, since the adoption of UNDRIP in 2007, gained a more prominent role. CEDAW does not refer to indigenous women or contain a provision for prohibiting racial discrimination. Its Committee has also shown little interest with no systematic review. UNDRIP was, on the other hand, particularly focused on the role of indigenous women:

Article 21: “[S]tates shall take effective measures...to ensure continuing improvement of [indigenous peoples’] economic and social conditions’, with ‘particular attention’ to the rights of **indigenous women**, among other demographic populations.”⁷⁹¹ [emphasis added]

Article 21.2: Notes that “states shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, **women**, youth, children, and persons with disabilities.”⁷⁹²

Article 22: Advises states “to take measures to ensure indigenous **women’s protection** against violence and discrimination.”⁷⁹³ [emphasis added]

⁷⁸⁷ This goes hand-in-hand with the notion that “you cannot move from point A to point B unless you create such fixed groups.” Thus, you end up having to pick issues that you will focus on first and then fix the others later. In Stakeholder consultation with Lorena Aguilar, IUCN. Interview with author.

⁷⁸⁸ McInturff further underlines that, in small communities, it is often difficult for women to run for positions of leadership against male relatives (e.g. Nunavut). Furthermore, negotiating relationships in small communities may be particularly difficult when certain persons hold more than one position and there is, for instance, little distinction between government representatives and civil society. Notes from a presentation by McInturff, Kate. “Mapping the Future”, Conference on “Gender, Law, and the Arctic”, University of Umea, Sweden, May 5-8, 2013.

⁷⁸⁹ This is visible in the structural inequality of traditional economies, such as reindeer herding, where women have been pushed to the margins over past decades. For example, Kuokkanen has noted that this has been particularly visible since 1945, when government policies “made Sami women invisible in the livelihood in which they had always played a prominent role.” Kuokkanen, Rauna. (2009) “Indigenous Women in Traditional Economies: The Case of Sami Reindeer Herding”, 34 *Journal of Women in Culture and Society* 3, 501.

⁷⁹⁰ Stakeholder Consultation with Lorena Aguilar. Interview with the author.

⁷⁹¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, access at: <http://www.refworld.org/docid/471355a82.html> (last accessed: 27 July 2013).

⁷⁹² Ibid.

⁷⁹³ McInturff has outlined situations in the Canadian Arctic where indigenous women are unable to leave their homes despite violence because communities are so small and there are no extra houses. She, in turn, suggests the development of cheap housing projects (e.g. The \$20,000 house project) that can help women leave their homes. In McInturff, Kate. “Mapping the Future”, Conference on “Gender, Law, and the Arctic”, University of

Article 22.2: “states shall take measures, in conjunction with indigenous peoples, to ensure that **indigenous women** and children enjoy the full protection and guarantees against all forms of violence and discrimination.”⁷⁹⁴ [emphasis added]

Article 44: UNDRIPS provides that all the rights and freedoms recognized in the declaration be guaranteed equally to male and **female** indigenous people.⁷⁹⁵

Furthermore, the UNPFII is active with regard to the mainstreaming of indigenous women’s rights and has even devoted a special session to indigenous women and gender in 2004.⁷⁹⁶ At its Sixth Session, it requested an investigation and subsequent report on “the impacts of mitigation measures on indigenous peoples.” This report⁷⁹⁷ recognized “[t]he crucial role of women and indigenous girls in developing mitigation and adaptation measures. It also noted that, “shared but differentiated responsibilities, equity, social justice and sustainable development, must remain as key principles that sustain climate change negotiations, policies and programmes. The approach to development and the ecosystem, based on human rights, should guide the design and implementation, at national, regional and global levels, of policies and projects on climate.”⁷⁹⁸

However, while women’s rights have been formally codified as human rights in CEDAW⁷⁹⁹ and indigenous peoples’ human rights have been codified in UNDRIP⁸⁰⁰ and recognized as crucial, indigenous women’s rights are often neglected at both the international and local levels.^{801 802 803} Parisi and Corn tassel note that, “due to colonization

Umea, Sweden, May 5-8, 2013; and UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, access at: <http://www.refworld.org/docid/471355a82.html> (last accessed: 27 July 2013).

⁷⁹⁴ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, access at: <http://www.refworld.org/docid/471355a82.html> (last accessed: 27 July 2013).

⁷⁹⁵ Ibid.

⁷⁹⁶ A Guide to Indigenous Women’s Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women (2012); Ellen-Rose Kambel, Forest Peoples Programme, 9.

⁷⁹⁷ This report was compiled by the Support Group members at the Forum on indigenous peoples and climate change (E/C.19/2008/10).

⁷⁹⁸ Revelo, Lorena, and Itzá Camey. (2008) *Resource guide on gender and climate change*. New York, NY: United Nations development programme (UNDP), 50-51.

⁷⁹⁹ Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1980), 1249 U.N.T.S. 13 (entered into force 3 Sept. 1981).

⁸⁰⁰ UNDRIP emphasizes its equal application to both “male and female indigenous individuals.” In UNDRIP, art. 4; It also mentions the obligation of both states and indigenous nations “to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.” In UNDRIP, art. 22(2).

⁸⁰¹ Kuokkanen, Rauna. (2012) “Self-Determination and Indigenous Women’s Rights at the Intersection of International Human Rights”, 34 Human Rights Quarterly, 225-227.

⁸⁰² Parisi and Corn tassel note: “For example, early versions of the Draft Declaration on the Rights of Indigenous Peoples (UN 1993) did not include any gender specific language with regard to violence against Indigenous women.” Laura Parisi & Jeff Corn tassel, In Pursuit of Self-Determination: Indigenous Women’s Challenges to Traditional Diplomatic Spaces, 13 Canadian foreign Pol’y 81, 87 (2007).

⁸⁰³ Sharon McIvor explains: Aboriginal women in Canada do not enjoy rights equal to those shared by other Canadians. Since 1869, colonialist and patriarchal federal laws—most notably the Indian Act—have fostered patriarchy in Aboriginal communities and subjected Aboriginal women to loss of Indian status and the benefits of band membership, eviction from reserve home, and denial of an equal share of matrimonial property.

and on-going imperial influences, both women's rights and indigenous rights movements have been problematic spaces for indigenous women's participation."⁸⁰⁴ Moreover, little attention has been given to how indigenous women experience human rights violations at the intersection of both individual and collective identities.⁸⁰⁵ Tension between the indigenous movement and the international women's rights movement – located in the international women's movement's "overemphasis on gender discrimination and gender equality which depoliticizes issues confronting Indigenous women" and lack of recognition of the special circumstances of indigenous women – has been reflected in indigenous women's criticism of the Beijing Platform for Action (1995).⁸⁰⁶ However, it must be remembered that, while the systemic violation of indigenous peoples' collective rights put individual indigenous women's rights at risk, the systemic violation of indigenous women's rights also risk indigenous collective rights.⁸⁰⁷

However, the "conception of indigenous peoples' rights as human rights on the one hand, and as both individual and collective rights on the other, exposes the double-standard in the domestic politicized rhetoric that opposes indigenous women's rights as individualistic and hence, in conflict with collective rights. Tension between indigenous and women's rights is largely to be found in the quest for indigenous self-determination, where "indigenous women advocating their rights have been repeatedly accused of being disloyal to their communities, corrupted by 'Western feminists,' and of introducing alien concepts and thinking to indigenous communities and practices."⁸⁰⁸ As noted in the Section 2.5. Indigenous Peoples Rights in International Law, indigenous peoples' self-determination has become a significant global human rights issue, at both the national and international level. However, potential difficulties may arise in reconciling UNDRIP provisions prohibiting discrimination and those relating to self-determination. Among the rights that may conflict with a gender equality approach to implementing of the declaration is the right to define the responsibilities of the individual to the community, to apply customary law to regulate community affairs, and to choose representatives to participate in decision-making. Finding the balance between individual and collective rights in a

Colonialism and patriarchy have also enabled cooperation between male Aboriginal leadership and Canadian governments to resist the inclusion of Aboriginal women in Aboriginal governance. These denials and exclusions perpetuate the exposure of Aboriginal women and their children to violence and consign many to extreme poverty." Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 233-234.

⁸⁰⁴ Parisi, Laura, and Jeff Cornthassel. "In Pursuit of Self-Determination: Indigenous Women's Challenges to 'Traditional' Diplomatic Spaces", Canadian Foreign Policy. 2007. 13(3): 81.

⁸⁰⁵ Environmental pollution and the destruction of ecosystems particularly undermine indigenous peoples' access to lands and resources. In addition, they compromise indigenous women's ability to take care of their children and families. In Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 231-232; Mairin Iwanka Raya. Indigenous Women Stand Against Violence", A Companion Report to the United Nations Secretary General's Study on Violence Against Women 8, (2006).

⁸⁰⁶ Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 232; Mary Sillett, Ensuring Indigenous Women's Voices Are Heard: The Beijing Declaration of Indigenous Women, in First Voices: An Aboriginal Women's Reader, 207-211. (Patricia A. Monture & Patricia D. McGuire eds., 2009).

⁸⁰⁷ Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 233.

⁸⁰⁸ Ibid. 236-237.

manner that enhances cultural integrity, while securing the integrity of women's rights, is a challenge that will require open-mindedness, willingness to compromise and change, as well as commitment from all parties. Moreover, despite fast-growing literature on indigenous peoples and self-determination, little research has been done on the gendered process of indigenous self-determination.⁸⁰⁹ Un-gendered research on indigenous self-determination often "conceals patriarchal structures and relations of power, which create hierarchical and differential access to resources, representation, political influence, and to being "heard" in indigenous societies."⁸¹⁰ **Consequently, Finland should encourage the development of a human rights framework that both accounts for indigenous self-determination and the human rights violations of indigenous women, which would contend that indigenous self-determination, cannot be achieved without accounting for pressing issues that involve indigenous women's social, economic, civil and political rights.**⁸¹¹

For example, according to Kuokkanen, Sami self-determination processes have seen strong criticism from Sami women, who have stated that collective self-determination should "primarily take place on the local level rather than through centralized institutions and several others discussed the paralyzing effect of the establishment of the Sami Parliaments."⁸¹² However, they have not mobilized to change the current political structure, which differs from other indigenous women who have explicitly rejected indigenous self-determination structures that replicate domination and patriarchal hierarchies rather than indigenous values and philosophies.⁸¹³ This includes localized and decentralized forms of participation and decision-making.⁸¹⁴ At the same time, indigenous feminism has, also been criticized as colonial and patriarchal.⁸¹⁵ Native Canadian women, for example, began mobilizing to advance their human, civil, and political rights and end

⁸⁰⁹ Ibid 225.

⁸¹⁰ Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 226.

⁸¹¹ Kuokkanen has noted that this would require "[a] human rights framework that advances individual and collective rights, as well as explicitly addresses gender-specific human rights violations of indigenous women in a way that does not disregard the continued practices and effects of colonialism." For more information on this issue see: Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 225-227, and 232.

⁸¹² Kuokkanen, Rauna. (2011), "Self-determination and Indigenous Women – 'Whose Voice Is It We Hear in the Sami Parliament?'" , International Journal on minority and Group Rights 18, 57-58.

⁸¹³ Kuokkanen notes: "In spite of their often strong criticism toward current Sami self-determination processes, Sámi women are not mobilizing to change the existing political structures. They are not going to media to voice their criticisms in public or demanding change; they are not openly challenging the system, nor are they calling for or thinking of alternatives for either masculine political institutions or the contents of Sámi self-determination." In Kuokkanen, Rauna. (2011), "Self-determination and Indigenous Women – 'Whose Voice Is It We Hear in the Sami Parliament?'" , International Journal on minority and Group Rights 18, 58.

⁸¹⁴ Ibid 18, 59.

⁸¹⁵ Kuokkanen notes that, "[a]lthough in the 1970s and 1980s, Sami women stressed their difference from their Nordic counterparts as part of the nation-building efforts, today Sámi women and their organizations largely focus on gender equality, anti-discrimination, personal autonomy and participation in existing structures and institutions on an equal footing with men in a very similar fashion to mainstream Nordic feminists and women's organizations. The basic assumption is that change is achieved through a legal and institutional reform and by creating more opportunities for women in society. Evidence of progress is often measured by the numbers of women in positions previously held by men, especially in positions of power." In Kuokkanen, Rauna. (2011), "Self-determination and Indigenous Women – 'Whose Voice Is It We Hear in the Sami Parliament?'" , International Journal on minority and Group Rights 18, 59-60.

gender discrimination and violence in their communities in the early 1970s. This led to the creation of numerous local, reserve-based groups and national organizations.⁸¹⁶ This mobilization was, however, poorly received by indigenous male leadership. Meanwhile, native women's organizations were particularly criticized for being anti-Indian and betraying self-determination, as well as being coopted into "colonial Western discourses of individualism."⁸¹⁷

As Kuokkanen has noted, "[f]or many indigenous women, self-determination is crucial both at individual and collective levels, and neither should be compromised in the name of the other. Individual self-determination is considered a condition for sustainable and strong collective self-determination. Survival, for indigenous women, is both an individual and collective matter."⁸¹⁸ **Finland must, thus, encourage the development of sustainable forms of self-determination at the local level, via active community involvement and citizen participation, rather than via indigenous representatives at national and international meetings.**⁸¹⁹ Moreover, Finland should encourage ensure that indigenous women's voices are heard. Moreover, such situations reveal prevailing gender injustice, rather than conflict between individual and collective rights, as the underlying problem of indigenous women's human rights.⁸²⁰ Prioritizing a human rights framework places gender inequality into a broader context that engages both oppression and privilege.⁸²¹ In the context of indigenous women, this shifts the attention to women's fundamental rights.⁸²²

⁸¹⁶ "This movement also resulted in two landmark court cases on discrimination against indigenous women. The Canada v. Lavell and Isaac v. Bedard cases in the Supreme Court of Canada (1974), and the Lovelace v. Canada case before the United Nations' Human Rights Committee (1977), argued that the Indian Act violated Canada's Bill of Rights and its prohibition against discrimination on the basis of sex.⁸¹⁶ In addition, Sandra Lovelace argued in her case that the Indian Act violated the ICCPR, particularly Article 27, which stipulates the right not to be denied the enjoyment of one's own culture and language.⁸¹⁶ While the Supreme Court of Canada ruled against Lavell and Bedard, arguing that the Indian Act status provisions were exempt from the Bill of Rights, the UN Human Rights Committee found Canada in violation of the ICCPR and recommended amending the Indian Act in a way that addressed its discrimination of women.⁸¹⁶ Reluctantly, the government representatives and male Native leadership came together with Native women's organizations and groups to draft and finally pass Bill C-31 in 1985.⁸¹⁶ This amendment, however, did not fully address or eliminate gender discrimination in the Indian Act. While Bill C-31 reinstated status to women who had lost it by "marrying out," it also introduced the so-called "second-generation cut-off" clause, which denied those with reinstated status under Bill C-31 the ability to pass status on to their children. As a response to a 2009 court decision, the Canadian government passed the Gender Equity in Indian Registration Act (Bill C-3) that came into force on 31 January 2011. In her case, Sharon McIvor argued that under the Canadian Charter, the Indian Act and Bill C-31 continue to discriminate against women on the basis of sex. McIvor won in the British Columbia Supreme Court in 2007 and the BC Court of Appeal in 2009 and, as a result, the Canadian government was required to amend the Indian Act.⁸¹⁶ However, the new bill still does not fully eliminate discrimination against indigenous women, but instead merely addresses the narrow issue of discrimination identified by the British Columbia Court of Appeal.⁸¹⁶ Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 234-235.

⁸¹⁷ Ibid.

⁸¹⁸ Ibid 247.

⁸¹⁹ Ibid 243.

⁸²⁰ Ibid 237.

⁸²¹ Ibid 241.

⁸²² Yet the human rights framework and rights-based discourses are not without their critics. Inherently anti-relativist in its attempt to formulate fundamental moral and ethical norms for human behavior and interaction, the human rights framework has long been criticized for its tendency to overlook cultural and regional

2.6.7. Conclusion

A gender approach aims to account for gender-specific needs and provides an understanding of how identities and relations have historically evolved in various social contexts. Such analysis enables social transformation that helps build more equitable policies and practices.⁸²³ The empowerment of women is, thereby, essential across three dimensions: economic development, environmental protection, and social equity. Consequently, in utilizing gender as a strategic development objective, environmental policies, programmes, and initiatives should, (1) employ a conceptual framework that incorporates gender equity; (2) include gender analysis and mainstreaming; (3) emphasize the gender-environment connection; (4) and redress the imbalance of decision-making between women and men.⁸²⁴ As all three Rio Conventions focus on climate change, to some extent, it would be beneficial for them to adopt a harmonized and systematic approach to gender mainstreaming and in promoting the cross-fertilization of experiences.⁸²⁵ This would be particularly appropriate at the national level, among NBSAPs, NAPAs, and NAPs. Moreover, Finland should take on intersectional analysis as a lens through which climate change policies may and should be viewed in the future.⁸²⁶

differences and for representing a form of cultural imperialism in its attempt to universalize the Western, liberal, individualistic rights framework. Feminist human rights scholars have also been critical of human rights' focus on male priorities, behavior, and interests while ignoring women's responsibilities and circumstances. However, the purpose of the UN Charter never was to replace national laws nor impose homogeneity. There are numerous human rights bodies and instruments to recognize and accommodate group-specific and regional differences. The recognition of cultural diversity was also the starting point for the Declaration, the ultimate objective of which was to create an instrument and framework for the realization of indigenous peoples' human rights, including "a number of collective human rights specific to indigenous peoples."⁸²² Kuokkanen, Rauna. (2012) "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", 34 Human Rights Quarterly, 242.

⁸²³ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 3.

⁸²⁴ UNEP. (2006) "UNEP Gender Plan of Action", 4.

⁸²⁵ As we will point out, the Convention on Biological Diversity is currently the most developed treaty in this regard.

⁸²⁶ "An intersectional analysis can be informed by developments in gender equality analysis, critical race analysis, disability rights analysis and equality rights jurisprudence. These strategies have developed to address the stereotypes, as well as the unique and intersecting experiences of individuals, because of race or gender or disability and would form a necessary part of the contextual and analytical framework... Several authors have examined the issue of multiple and intersecting identities and their relationship to people's experience in the social, economic, political and legal environment. Several socio-economic reports and research studies documenting individuals' experiences in society, the workplace and other social spheres highlight the importance of multiple factors that constitute identities and recognize its importance not only in human rights discourse but in human rights policy development as well. Esmeralda Thornhill,⁸²⁶ Nitya Iyer (formerly Duclos), Emily Carasco, and Carol A. Aylward are several scholars who have studied the issue of the intersection of race and gender and have written about the situation of individuals who confront multiple grounds of disadvantage." In "Applying an Intersectional Approach", Ontario Human Rights Commission, access at: <http://www.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims/applying-intersectional-approach>; E. Thornhill, "Regard sur le racisme: Perspectives juridiques à partir d'un vécu noir" (1993) 6 C.J.W.L. 1 and E. Thornhill, "Focus on Racism: Legal Perspectives from a Black Experience" (1994) Currents 8, discussed in C. A. Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood, 1999) at 45; N. Iyer, "Categorical Denials: Equality Rights and the

Intersectional analysis is particularly useful in addressing people's unique discriminatory experiences, especially those not captured by the existing human rights approach.

2.7. HRBA to the Environment

“The human rights framework reminds us that climate change is about suffering – about the human misery that results directly from the damage we are doing to nature...[I]f we build human rights criteria into our future planning, we will better understand who is at risk and how we should act to protect them.”⁸²⁷

–Mary Robinson, former UN High Commissioner for Human Rights

With regard to indigenous peoples and women, the value of human rights for strengthening the links between human rights and the environment lies in its tools. As Ziemer notes, by “[l]inking human rights with the environment creates a rights-based approach to environmental protection; it places the people harmed by environmental degradation at its center.”⁸²⁸ For international climate policy, it is effective in the following regards: (1) it allocates climate mitigation and adaptation burdens between and within states; and (2) it adds the missing compensatory dimension for damage resulting from climate change.⁸²⁹ It also complements the existing climate change regime by highlighting that international cooperation is a human rights obligation, where standards and principles should inform and strengthen policy-making, promoting coherence and sustainable outcomes.⁸³⁰ Moreover, it can set a baseline for decision-making processes, while also providing a more integrated governance system for responding to environmental and human rights concerns in a more timely manner. This is particularly important as current efforts to coordinate between global and national level agencies and treaty bodies – with no comprehensive international agreements for holistically addressing issues regarding environmental protection and human rights – has been unsuccessful with regard to integrative laws and policies.⁸³¹

Shaping of Social Identity” (1993) 19 Queen’s L.J. 179; N. Duclos, “Disappearing Women: Racial Minority Women in Human Rights Cases” (1993) 6 C.J.W.L. 25; E. Carasco, “A Case of Double Jeopardy: Race and Gender” (1993) 6 C.J.W.L. 142.

⁸²⁷ Mary Robinson, former UN High Commissioner for Human Rights, foreword to ICHRP, *Climate Change and Human Rights: A Rough Guide* (2008).

⁸²⁸ Ziemer, Laura. (1997) *Environmental Harm as a Human Rights Violation: Forging New Links*, Sierra Club Legal Defense Fund (1997), available at: <http://www.tibet.com/Eco/Green97/violation.html>. (Last accessed: June 10th, 2013).

⁸²⁹ Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) “Climate Change and Human Rights” in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 324; McInerney-Lankford, Siobh n. (2009) “Climate Change and Human Rights: An Introduction to The Legal Issues”, 33 *HARVARD ENV. L.REV.*, 436; Cameron (2011, 15); Caney in Humphreys, S. (2010). *Human rights and climate change*. Cambridge: Cambridge University Press.

⁸³⁰ Limon, Marc (2009). “Human Rights and Climate Change: Constructing a Case for Political Action”, 2 *Harvard Environmental Law Review* 33, 462.

⁸³¹ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 7.

“The importance of human rights for development is widely recognised” and there is a “growing consensus on the value of human rights principles – such as participation, non-discrimination and accountability – for good and sustainable development practice.”⁸³² There are several advantages to integrating and highlighting human rights in existing procedures pertaining to climate change processes. These include: drawing on already-developed infrastructure, gaining additional resources in determining vulnerability, specifically the erosion of human rights, as well as added legitimacy in developing new mandates.⁸³³ Additional advantages include: influencing the vocabularies, expertise and sensibilities of practitioners; the improved analysis of drivers, impacts and thresholds; enhanced governance, consultation and participation; authoritative advocacy and enhanced political profile; broadening the terms of climate change dialogue; instrumental value for practitioners; accountability mechanisms; individuals become the centre of inquiry; attention is drawn to existing climate change impacts and links them to the realization of various human rights; greater diversity of innovation; support for vulnerable communities (especially regarding international assistance); incorporating different forms of knowledge into policy-making; empowering marginalized groups; improving the quantity and quality of available policy choices; and strengthening the accountability of adaptation measures.⁸³⁴ The inclusion of human rights into existing procedures – infrastructure, additional resources, erosion of human rights, and added legitimacy – allows for good governance⁸³⁵. This incorporates local communities’ human and economic dimensions (including livelihood) in developing and implementing policies.⁸³⁶ Local communities’ involvement has been reinforced by arguments that engaging affected parties in participatory, democratic, and transparent processes is both empirically and normatively effective.⁸³⁷ A rights-based approach particularly focuses on vulnerable groups and communities, thereby empowering them as agents and giving them ownership in designing and implementing adaptation policies, as well as setting national and international mitigation targets and helping them hold decision-makers accountable.⁸³⁸ It also serves as an effective means of reinforcing the link between human rights and the environment. Reasons for adopting a HRBA include:⁸³⁹ greater clarity regarding underlying causes – positive or negative impacts on activities in the context of human rights and the environment – and impacts on

⁸³² OECD DAC (2007). DAS Action-Oriented Policy Paper on Human Rights and Development, p. 3.

⁸³³ Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”, 15.

⁸³⁴ Lankford, Siobhán Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 2.

⁸³⁵ Human rights and good governance are often linked. However, human rights present objectives, good governance policies aim to also provide means for achieving them. For more information on a rights-based or HRBA to development see: Seppänen, Samuli. (2005) “Possibilities and Challenges of the Human Rights-Based Approach to Development”, 17 Helsinki: Erik Carstrén Institute Research Reports, 16-18.

⁸³⁶ *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 16.

⁸³⁷ Andonova, Liliana B. and Mitchell, Ronald. (2010) *The Rescaling of Global Environmental Politics* (November 2010). Annual Review of Environment and Resources 35, 271.

⁸³⁸ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 16.

⁸³⁹ OHCHR and UNEP. (2012) “Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP” (Background Document), OHCHR-UNEP Joint Side Event, “Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1”, United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June 2012, 34-35.

the enjoyment of human rights, thus, allowing for better choices;⁸⁴⁰ improving outcomes via positive synergies and improving the governance of natural resources; increased legitimacy of activities, programmes, and policies via the integration of: social concerns, environmental goals, as well as widely agreed-upon norms specifying actors' rights and responsibilities;⁸⁴¹ effective instrument for ensuring that activities regarding the environment and human rights, undertaken by the government, the private sector, as well as environmental and human rights organizations are, in fact, accountable⁸⁴²; cross-sectoral links that can further sustainable development by providing a framework for integrating social and economic development with environmental protection; increased awareness of the negative implications of failing to protecting natural resources and biodiversity on human rights⁸⁴³; increased legitimacy of policies through the integration of social and environmental concerns; enhanced accountability of governments, the private sector, and environmental or human rights organizations; and stronger cross-sectoral links that can further efforts towards sustainable development.⁸⁴⁴ On the other hand, challenges include:⁸⁴⁵ government and other actors' lack of engagement in long-term conservation efforts or not realizing human rights, despite international and domestic legal guarantees; less attention given to discussions surrounding inter-generational equity; an indirect concern for the environment as human rights largely focus on the well-being of humans; limited capacities of states or non-state actors to partake in a rights-based approach, which may require substantial resources (e.g. time, expertise, information, funding). The process of human rights integration is accompanied by support from civil society as well as the spread of participatory approaches – “paying attention to free, informed and meaningful participation that could be institutionalized” – and initiatives to empower and build the capacity of vulnerable populations.⁸⁴⁶

A human rights framework can help highlight the vulnerability of marginalized groups in the context of climate change.⁸⁴⁷ Disadvantages include no actual input in mitigation and adaptation successes, as well as the risk of the simple rhetorical repackaging of aid policies through incorporating of human rights language.⁸⁴⁸ Additionally, UN human rights mechanisms are often described as “powerless” while a human rights framework is seen as providing no guidance on how to mitigate and adapt to climate change.⁸⁴⁹ Aid is often criticized by various civil society actors for still being

⁸⁴⁰ Ibid 35.

⁸⁴¹ Ibid.

⁸⁴² Ibid.

⁸⁴³ Ibid.

⁸⁴⁴ Ibid 7.

⁸⁴⁵ Ibid 35.

⁸⁴⁶ OECD DAC (2006). Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges, p. vii. OECD DAC (2007). DAS Action-Oriented Policy Paper on Human Rights and Development.

⁸⁴⁷ Limon, Marc (2009). “Human Rights and Climate Change: Constructing a Case for Political Action”, 2 *Harvard Environmental Law Review* 33, 451.

⁸⁴⁸ OECD DAC (2006). Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges. Uvin 2004.

⁸⁴⁹ Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development, p. 21.

affected by serious power imbalances.⁸⁵⁰ Translating climate change implications into human rights language has, at times, been regarded as creative interpretation based on ethical and moral import and has, in turn, been avoided in current policy-making.⁸⁵¹ Nonetheless, [h]uman rights language may provide normative traction for strong mitigation and adaptation policies and human rights monitoring bodies have recognized that the effects of climate change have undisputed implications for individuals' well-being.⁸⁵²

An often-discussed roadblock is the fragmentation of international law, where various sub-disciplines increasingly function independently of one another, leading to overlapping and even conflicting sets of norms, framed without due consideration of either discipline.⁸⁵³ ⁸⁵⁴ The isolation of environmental and human rights law, to date, serves as a paradigmatic example.⁸⁵⁵ It is, in a sense, unavoidable that specialization and diversification in the development of international legal mechanisms leads to parallel paths despite commonalities⁸⁵⁶. In the climate change regime, procedural fairness, environmental justice, and arguments for immediate climate change action have emerged as important principles without reference to human rights and, thereby, serve to disregard the

⁸⁵⁰ See, e.g., BetterAid (2011). Development effectiveness in development cooperation: a rights-based perspective.

⁸⁵¹ Kravchenko, Svitlana. Procedural Rights as a Crucial Tool to Combat Climate Change (October 27, 2010). Georgia Journal of International and Comparative Law, Vol. 38, No. 3, Spring 2010, 616. Available at SSRN: <http://ssrn.com/abstract=1698828> or <http://dx.doi.org/10.2139/ssrn.1698828>. Adelman notes that, "the 'language of human rights ultimately may prove inadequate for encapsulating the problems posed by climate change' and that we may be asking them to achieve something for which they are not designed." In Adelman, S. 'Rethinking Human Rights', 159, In S Humphreys (ed) Human Rights and Climate Change (2010) 166 Cambridge University Press: UK.

⁸⁵² Leena Heinämäki. The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 27; Bodansky, Daniel. (2010) "Climate Change and Human Rights: Unpacking the Issues" *Georgia Journal of International and Comparative Law* 38, 8; Caesens, Elisabeth, and Maritere Rodr guez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 42.

⁸⁵³ Leena Heinämäki. The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 252-253.

⁸⁵⁴ Caesens, Elisabeth, and Maritere Rodr guez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 39.

⁸⁵⁵ Whereas MEAs allow for differential treatment between states, human rights treaties, in theory, do not. The UNFCCC is based on a principle of reciprocity, where states hold obligations toward other participating states (eg under Article 7 of the UNFCCC). International human rights law, on the other hand, is principally concerned with states' obligations toward its own citizens (to be held or broken on a national level), as well as interstate obligations. As understood under the ICCPR and ICESCR. The obligation to protect human rights can be understood as having an explicit preventative component. However, states' human rights duties carry over into the international arena. This is visible in Article 2 of the ICESCR, as well as in Article 3(7) of the Aarhus Convention, which requires that states who are party to its principles in "international decision-making processes" and international organisations. In Lankford, Siobh n Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 7, 47, and 50; In Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press, 11-12.

⁸⁵⁶ The shared aim of the climate change regime and human rights regimes includes the protection of human dignity for present and future generation; as well as sustainable global development that tackles the deleterious effects of environmental degradation on livelihoods; In Caesens, Elisabeth, and Maritere Rodr guez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-B ll-Stiftung, 15.

vulnerability of those who are already marginalized.⁸⁵⁷ International human rights policy and climate change policy, thus, stand to gain from cross-fertilization, addressing the human and equity dimensions of climate change.⁸⁵⁸

⁸⁵⁷ Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-Bell-Stiftung, 15 and 39; Multilateral Environmental Agreements (MEAs) (eg UNFCCC) and human rights treaties (eg ICESCR) have evolved independently of one another, as well as other bodies of relevant international law (eg trade and intellectual property rights). In McNerney-Lankford, Siobhán. (2009) "Climate Change and Human Rights: An Introduction to The Legal Issues", 33 *HARVARD ENV. L.REV.*, 434; Lankford, Siobhán Alice, Mac Darrow, and Lavanya Rajamani. (2011) *Human rights and climate change: a review of the international legal dimensions*. Washington, D.C.: World Bank, 21.

⁸⁵⁸ McNerney-Lankford, Siobhán. (2009) "Climate Change and Human Rights: An Introduction to The Legal Issues", 33 *HARVARD ENV. L.REV.*, 431.; Effectively, traditional human rights mechanisms cannot be used in protecting peoples from global environmental interference, such as climate change. As the Inuit Petition has shown, at this time, they cannot offer indigenous peoples effective protection against climate change. It also highlights that human rights monitoring bodies are hardly able to cope with issues of climate change – issues of causality and responsibility; According to Humphreys, literature focusing on the link between climate change and human rights is sparse. Reasons may include difficulties establishing causality; While international human rights law emphasises equity within states, climate change policy focuses on equity between states. In Duyck, Sebastien, Timo Koivurova and Leena Heinämäki. (2012) "Climate Change and Human Rights" in *Climate Change and the Law*, edited by Erkki J. Hollo, Kati Kulovesi, Michael Mehling, 323; Leena Heinämäki: *The Right to Be a Part of Nature: Indigenous Peoples and the Environment*. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 207-208.

Chapter 3. Processes

Given the discrepancy between human rights and environmental governance, the *defining challenge* is how to appropriately develop mitigation and adaptation⁸⁵⁹ policies in a manner that accounts for all social groups, including those who are already marginalized, and focuses on supporting them in the implementation of various measures.⁸⁶⁰ Successful mitigation of and adaptation to climate change (due to various factors) must either be undertaken in consideration of, or in combination with, existing and potential strategic plans and policies at multiple levels of governance.⁸⁶¹

Consequently, the significance of global environmental governance is two-fold: the crucial role played by international organizations in developing major environmental treaties; and their role in widening participation to include non-governmental organizations, industry and business, and civil society in general.⁸⁶² Intergovernmental organizations, such as the UN, have served as places and spaces where interstate cooperation, necessary for developing international environmental policy and regulatory regimes, has been realized. UN conferences, especially the 1972 Stockholm Conference and the 1992 Rio Conference, have set the agenda for work relating to the environment. Consequently, acting as a permanent forum has led international organizations to become a key part of the law-making process. However, it must also be noted that, “progress in the development of policy and law depends entirely on the willingness of member states.”⁸⁶³ “International institutions have not been systematically integrated, but their environmental efforts can nevertheless complement each other better than might have been expected; their achievements stem not from large bureaucratic operations or enforcement powers, but from their catalytic role in ‘increasing governmental concern, enhancing the contractual environment and increasing national political and administrative capacity.’”⁸⁶⁴

⁸⁵⁹ The IPCC defines adaptation as “the process of adjustment to actual or expected climate [...] effects in order to moderate harm or exploit beneficial opportunities.” In Field, Christopher B. (2012) *Managing the risks of extreme events and disasters to advance climate change adaptation*. New York: Cambridge University Press, 3; Adaptation is defined as an adjustment process of ecological and socio-economic systems as a response to current or expected climate stimuli on exposed and vulnerable social groups. It ranges based on scale: adaptation by an individual or household to a specific climatic stress, such as droughts; the adaptation of a community to multiple stresses; as well as adaptation to all stresses and forces on a global scale. In Smit, B. and J. Wandel. (2006) “Adaptation, adaptive capacity, and vulnerability”, *Global Environmental Change* 16, 282-283.

⁸⁶⁰ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 5; Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”, 8.

⁸⁶¹ Smit, B. and J. Wandel. (2006) “Adaptation, adaptive capacity, and vulnerability”, *Global Environmental Change* 16, 289.

⁸⁶² Toope, in Byers (ed.) *The Role of Law in International Politics*, 96; Commission on Global Governance, *Our Global Neighbourhood*, 253-60. On NGO participation in the work of international organizations see *infra*, section 6. Higgins, *Problems and Process: International Law and How We Use it* (Oxford, 1994), Ch. 3, argues strongly that discussion of the ‘subjects’ of international law is outmoded and should be replaced by ‘participants’. On participation by individuals see 1998 Aarhus Convention, *infra*, Ch. 5 and 1989 ILO Convention No. 169. For more detailed citations see Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 36.

⁸⁶³ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 36.

⁸⁶⁴ As quoted by El-Ashry, *Rio Review* (Centre for Our Common Future, 1992).

Policy action linking human rights and climate change may, thus, serve as a strategic means and normative basis for both women and indigenous peoples to further their rights, participation, and empowerment.⁸⁶⁵ The international human rights framework, the international environmental law framework, the international climate change framework, and the international development framework can all benefit in recognizing basic standards. International environmental law and the international climate change framework, in particular, should highlight their recognition of internationally agreed-upon human rights treaties by designing state obligations that consider both women's rights, as well as indigenous peoples' rights to self-determination, cultural integrity, and property.⁸⁶⁶

Standards setting and policy-making with regard to women and indigenous peoples in the context of human rights and climate change should, thus, be reflected in the **climate change regime, development cooperation, and REDD.**⁸⁶⁷

The following section will provide entry points for Finnish Foreign Policy to address the climate vulnerability of already marginalizes groups, with a particular focus on indigenous peoples and women.

⁸⁶⁵ See, e.g., UNDP (2012), Overview of linkages between gender and climate change. Gender and Climate Change in Africa Series. Policy Brief 1; Stepien et al. (2013). In Arctic Transform Springer book (in print).

⁸⁶⁶ The international climate change regime has already recognized indigenous peoples' interests in on-going negotiations regarding the REDD program. See UN REDD Programme website, available at <http://www.un-redd.com/AboutREDD/tabid/582/Default.html> (last accessed: 29 March 2013).

⁸⁶⁷ Despite challenges in linking the international human rights framework and indigenous peoples in the context of climate change (see the Inuit Petition), the discourse surrounding human rights can provide a basis for international and national standard setting and policy-making. The Inter-American commission of Human Rights declined to hear a petition by the Inuit Circumpolar council alleging that the United States' refusal to limit greenhouse gas emissions constituted a violation of human rights. See Revkin, Andrew C, "Americas: Inuit Climate Change Petition Rejected", *New York Times*, 16 December 2006.

3.1. Procedural Rights in International Environmental Governance

3.1.1. The Aarhus Convention and Public Participation in International Forums

3.1.1.1. *Promotion of the Aarhus Principles in International Forums*

The provisions of the Aarhus Convention build upon the 1995 Sofia Draft Guidelines on Access to Information and Public Participation in Environmental Decision Making.⁸⁶⁸

While the Sofia Draft Guidelines only focused on implementation of these principles at the national and subnational levels, the Aarhus Convention also explicitly provides a legally binding obligation for its parties to promote these principles in international governance.

*Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.*⁸⁶⁹

This article reflects the experience of the parties to the Aarhus Convention when negotiating the provisions of the convention as this negotiating process was considered as particularly participatory.⁸⁷⁰ It also highlighted the willingness of the parties to ensure that the principles of the Aarhus Convention would also be promoted outside of the UNECE regions in third states.⁸⁷¹ This objective is also reflected in the possibility open to non-UNECE states to access to the convention, an opportunity that will be further discussed below.

Almaty Guidelines

In order to further implement the provision of article 3.7 of the Convention, parties adopted during the second Meeting of the Parties (MOP) the *Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in international Forums*.⁸⁷² As the other international instruments mentioned above do not address in more details the issue of procedural rights in international decision-making, the Almaty Guidelines constitute the most articulated international instrument in relation to the promotion of procedural rights at the international level. They provide normative foundations and procedural safeguards that guarantee that the views of those affected are

⁸⁶⁸ UNECE Environment for Europe, 2nd Conference, Sofia 1995, UN doc. ECE/CEP/24.

⁸⁶⁹ Aarhus Convention, Article 3.7.

⁸⁷⁰ Eric Dannenmauer, "A European Commitment to Environmental Citizenship: Article 3.7 of the Aarhus Convention on Public Participation in International Forums, *Yearbook of International Environmental Law* Vol. 18 (2007), at 41.

⁸⁷¹ *Ibid.*, at 45.

⁸⁷² MOP Decision II/4 (2005), ECE/MP.PP/2005/2/Add.5.

or will be reflected in the final policy outcome of international processes related to environmental decision making.⁸⁷³

The Almaty guidelines do not refer specifically to the particular needs and interests of any particular group of stakeholders such as indigenous peoples or women. As they do not refer to the existence of different constituencies the input of which should be balanced, the guidelines reflect another approach to public participation in international decision-making processes than currently implemented through many intergovernmental processes. Environmental Intergovernmental organizations often structure public participation in a way ensuring that the voices of different stakeholders can be represented adequately, either on the basis of regional representation or in relation to categories of stakeholders.⁸⁷⁴ Following the practice applied at the meetings of the Aarhus bodies where participation by stakeholders is not structured under such categories, the Almaty Guidelines thus do not refer to the need for different groups to be represented.

The Almaty guidelines however do emphasize explicitly that special measures should be set in place in order to ensure the participation of marginalized groups. They emphasize factors related to their marginalization rather than referring to pre-established groups.

*Where members of the public have differentiated capacity, resources, socio-cultural circumstances or economic or political influence, special measures should be taken to ensure a balanced and equitable process. Processes and mechanisms for international access should be designed to promote transparency, minimize inequality, avoid the exercise of undue economic or political influence, and facilitate the participation of those constituencies that are most directly affected and might not have the means for participation without encouragement and support.*⁸⁷⁵

In practice, secretariats of UN processes have often relied on the categorization of various groups of stakeholders among several categories or major groups in order to manage the practical challenges related to the participation of a large amount of stakeholders. The Almaty Guidelines do provide guidance with regards to limitations restricting access to international forum when such *measures are necessary and unavoidable for practical reasons*.

Selection criteria may include field of expertise, representation in geographic, sectoral, professional and other relevant contexts, and knowledge of the working

⁸⁷³ Siobhan McNerney-Lankford, Mac Darrow, Lavanya Rajamani, "Human Rights and Climate Change", World Bank Study (2011), at 39.

⁸⁷⁴ The UNFCCC, the CBD and the UN Commission on Sustainable Development structure civil society participation on the basis of the nine major groups. In the work of UNEP, civil society participation is structured on a dual basis, both following a regional and a major group approach.

⁸⁷⁵ Almaty Guidelines, para. 15.

*language, having due regard for paragraphs 17 and 18 [referring to the importance of providing support for capacity building as well as financial resources].*⁸⁷⁶

These provisions provide an opportunity for the strengthening of the representation of most marginalized groups of stakeholders, including women and indigenous peoples and could be more systematically referenced when defining modalities for stakeholders engagement in intergovernmental processes and when developing mechanisms, including funding mechanisms, to support effective public participation in such processes.

Institutional Arrangements related to PPIF

In parallel to the adoption the Almaty Guidelines, parties also agreed to establish a task force to promote the implementation of the guidelines in consultation with other international forums with a three years long mandate. The mandate of the task force was extended for another three years at the third meeting of the parties.⁸⁷⁷ The task force met six times during this period, Finland being represented only at some of these meetings. The two main activities of the task force consisted in gathering information relative to best practices among international environmental institutions and to organize thematic discussions focused on specific international forums. The UNFCCC secretariat, among other international bodies, responded to a survey conducted by the Aarhus secretariat to highlight its current rules and practices framing the participation of the public to its proceedings.⁸⁷⁸ Several examples of best practices were thus drawn from the experience of the UN climate change negotiations in relation to the promotion of access to information, public participation and access to review procedures in international environmental governance.⁸⁷⁹

The provisions of the Almaty Guidelines specify that the promotion of these principles shall apply at all stages of decision making, and including in relation to the work of subsidiary bodies.⁸⁸⁰ In relation to the international climate change regime established under the UNFCCC, these provisions make clear that the commitment of parties to the Aarhus Convention to promote stakeholders procedural rights extend to the various processes established at the international level and would thus apply to institutions such as the Green Climate Fund or the governance of the Flexibility Mechanisms established under the Kyoto Protocol.

Following concerns raised by stakeholders in the aftermath of the UNFCCC 15th Conference of the Parties taking place in 2009 in Copenhagen, the case of the UNFCCC was discussed specifically at the fifth and sixth meetings of the task force. On the basis of

⁸⁷⁶ Almaty Guidelines, para. 31.

⁸⁷⁷ MOP decision III/4, ECE/MP.PP/2008/2/Add.6, para 2.

⁸⁷⁸ "Response from the UNFCCC Executive Secretary to the chair of the working group of the parties to the Aarhus Convention", YdB/BB/dtd, 06-6482.

⁸⁷⁹ Innovations in Public Participation in International Forums, Document preparatory to the sixth meeting of the Task Force on Public Participation in International Forums and workshop, 2011.

⁸⁸⁰ Almaty Guidelines, para 4 and 29.

the discussions resulting from these presentations, the working group recommended concrete actions by the parties to the convention to continue promoting actively the principles of the Aarhus Convention in relation to the UNFCCC process.⁸⁸¹

In order to mainstream the work of the convention on the application of its principles in international forums, the parties decided during the fourth Meeting of the Parties (2011) to discontinue the task force and mandated the Working Group of the Parties (WGP) to continue the work related to the promotion of the principles of the convention in international environmental governance.⁸⁸² This decision also builds on the decision to reorganize the institutional structure established under the Convention with only three task forces continued after the MOP-4, each focused on one of the three pillars of the Convention.

Since the adoption of this decision, the WGP met twice in September 2012 and June 2013. Both of the meetings hosted a special session dedicated to the issue of Public Participation in International Forum. The organization of these thematic sessions during the WGP has lowered the costs of the proceedings compared to the organization of separate events and enables a higher level of attendance of the sessions with more parties to the convention actually represented at the WGP than previously at the meetings of the Task Force. On the other hand, this new format has led to a reduction of the time available for the discussions focused on PPIF. At both meetings of the WGP, the thematic session was reduced to a half-a-day event, thus limiting the amount of time dedicated to each of the panels organized during the thematic session.

Furthermore, due to the absence of time allocated for deliberation among parties as a response to the presentation delivered, the 16th session of the WGP failed to endorse any particular proposal highlighted during the various panels, as it only noted the outcomes of the presentations, whereas meetings of the Task Force and of the thematic session held during the 15th WGP directed parties to take specific actions.⁸⁸³

During past meetings and sessions dedicated to public participation in international forum, the lack of coherence within national administration has repeatedly been highlighted as an obstacle to the full implementation of the obligation contained in article 3.7, as country delegates representing Aarhus parties in other international forums are often unaware of the legal obligation.

Recommendations

- **Regular attendance** by a Finnish representative at the meetings related to PPIF. Up to now, Finland has not been systematically represented at meetings deliberating on this issue. A more consistent presence of Finland, as well as an

⁸⁸¹ Aarhus Convention WGP-12/Inf.5, item 5 (b)

⁸⁸² MOP decision IV/3, ECE/MP.PP/2011/CRP.5, para. 7.

⁸⁸³ See for instance: Report of the 15th meeting of the Working Group of the Parties, ECE/MP.PP/WG.1/2012/2, para. 76.

active role within the EU coordination meeting, would indicate a stronger commitment of the country to promoting these principles.

- Ensure that the shift of the discussions related to PPIF from the dedicated task force to special sessions of the working group **does not result in a weakening of the work done by the parties and by the secretariat of the convention on PPIF**. Finland could express, individually and through the EU coordination process, strong support for the allocation of sufficient amount of time for the thematic sessions dedicated to PPIF as well as the expectations that the thematic sessions result in the identification of concrete actions by parties and the secretariat to address gaps in implementation, actions that should be reviewed at the following WGP. This support could also include a concrete proposal on how to make best use of the MOP-5 (June 2014, the Netherlands) to provide sufficient momentum to the implementation of the Almaty Guidelines.
- Ensure full participation of Finland to the **activities supported by the secretariat of the Aarhus Convention** to ensure the full implementation the principles of the Aarhus Convention in International Forums. Finland, through its Aarhus Convention Focal Point⁸⁸⁴, should take implement the activities suggested by the Aarhus Convention, including reporting back through of its best practices and of challenges faced in the implementation of the obligations under article 3.7 as well as raising awareness within the relevant services of the existence of this legally binding obligations and on how its implementation relates to the priorities identified for Finland's Human Rights policy.
- Champion the notion of **additional support being provided to ensure the participation of most vulnerable groups**. Finland could continue to advocate for such mechanisms where it already has done so and suggest such approach in forums lacking any such mechanism in order to ensure that most vulnerable and marginalized groups are represented and take actively part to the relevant processes. Within the Aarhus Convention proceedings, Finland could promote this principle within the EU coordination group as an element of the implementation of the legally binding obligation contained in article 3.7 of the Convention. It could also suggest that specific work be done by the secretariat in order to review best practices and opportunities related specifically to this specific element of the Almaty Guidelines, as well as specific discussion during the thematic session to be held at the next meeting of the WGP (March 2013).
- Champion, **within EU coordination activities**, the promotion of the Aarhus Convention principles in relevant MEA processes, reminding other EU member states representatives of their legally-binding obligation to promote these principles at the international level of environmental governance. Finland could for instance offer to serve as – or call for the nomination among EU countries of – an Aarhus principles focal point in important intergovernmental processes to which

⁸⁸⁴ The Finnish point for the Aarhus Convention is currently Ms. Eija Lumme, Ministerial Adviser at the Unit for International and EU Affairs, Ministry of the Environment.

stakeholders representatives could possibly raise concerns and highlight opportunities for implementation of the Aarhus principles.⁸⁸⁵

3.1.1.2. Promoting the Aarhus Principles outside of the UNECE Accession by non-UNECE Parties

In order to promote its principles beyond the geographic scope of the UNECE (which covers North America, Europe and Central Asia), the provisions of the convention open the possibility for non-UNECE countries to become parties to the Aarhus Convention.⁸⁸⁶

*Any other State, not referred to in paragraph 2 above [States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe], that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties.*⁸⁸⁷

Since 2001, the parties to the Aarhus Convention have repeatedly emphasized the importance of this provision, noting for instance at COP-1 that they “*believe that the involvement of [non-UNECE] States could be of mutual benefit and could enrich the processes under the Convention, and would, therefore, be broadly supportive of their accession*”.⁸⁸⁸ At the COP-3, parties decided to include in the strategic plan for 2009-2014 the objective of securing accessing by non-UNECE parties, setting 2011 as the deadline for the performance of this objective suggesting the following indicative activities to achieve this objective: “*use of bilateral, regional and international cooperation arrangements to raise interest in the Convention, e.g. the European Neighbourhood Policy; build public and political support for accession; provision of assistance upon request*”.⁸⁸⁹

Following the request by non-UNECE parties for clarification on the process for the acceptance of non-UNECE countries accession, the secretariat of the Aarhus Convention recommended to the parties the definition of a process to enable decisions over this matter.⁸⁹⁰ The MOP-4 thus defined in 2011 a procedure in order to clarify the requirement of approval by the MOP as a condition to such accession.⁸⁹¹ According to this decision, accession by third states shall require a report provided by the state to highlight the activities undertaken or planned to implement the convention. The following session of

⁸⁸⁵ The fifth meeting of the task recommended the nomination of a focal point by parties for matters related to implementation of article 3.7 during the sessions of the UNFCCC, ECE/MP.PP/WG.1/2011/3, report para. 26 (g).

⁸⁸⁶ Such a provision was originally included in none of the four other multilateral environmental agreement signed under the UNECE. In 2001 the Espoo Convention on Environmental Impact Assessment was amended in order to also allow for this possibility. This amendment has however yet to enter into force. ECE/MP.EIA/4, Annex XIV.

⁸⁸⁷ Aarhus Convention, art. 19.3.

⁸⁸⁸ Lucca Declaration (2002), ECE/MP.PP/2/Add.1, para. 33. See also decision II/9, ECE/MP.PP/2005/2/Add.13.

⁸⁸⁹ Strategic Plan 2009-2014 (2008), ECE/MP.PP/2008/2/Add.16, Objective II/4.

⁸⁹⁰ Note by the Secretariat, 15 March 2010, extraordinary session of the WGP.

⁸⁹¹ Decision IV/5, ECE/MP.PP/2011/2/Add.1, 26 ff.

the MOP shall then consider this report and decide whether to allow the third state to access to the Convention.

Cameroon indicated in 2010 its interest to access to the convention, an interest also expressed in 2011 by Mongolia – the latter was followed by a UNECE expert mission in the country. So far however no country outside of the UNECE region has however accessed to the convention. NGOs representatives have called for the suppression of the special requirement of approval by the MOP of accession by non-UNECE parties in order to simplify the accession procedure – which would thus be similar for UNECE parties and non-UNECE Countries - and to signal the political acceptance of such accessions.⁸⁹²

Considering that the Aarhus Convention contains important provisions for the guarantee of the procedural rights of stakeholders and is supported by a compliance mechanism considered as relatively effective, the accession by non-UNECE countries could promote the procedural rights in environmental decision of local communities located outside of Europe.

Latin American regional cooperation to promote the implementation of principle 10

Following the adoption of the Rio declaration in 1992, American states have also expressed their commitment to rights highlighted in principle 10 and have mandate their regional organization to promote the implementation of this principle. At the 1996 Santa Cruz Summit of the Americas, the regional governments committed to work, through the OAS, to promote *effective participation [by the public] in the formulation, adoption, and execution of decisions that affect their lives*.⁸⁹³ The OAS also monitored with special interest the work accomplished under the UNECE With the adoption of the Aarhus Convention.⁸⁹⁴

In fulfillment of a mandate of the 1996 Santa Cruz Summit, the OAS formulated a comprehensive instrument - the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development (ISP) - to strengthen the regional implementation of principle 10.⁸⁹⁵ The ISP was itself drafted in consultation with officials and experts from governments and civil society.⁸⁹⁶ The ISP contains a policy

⁸⁹² Statement by the ECO-Forum at the WGP-16, June 2013, access at <http://www.unece.org/env/pp/aarhus/wgp16.html> (last accessed 9 June 2013).

⁸⁹³ Declaration of Santa Cruz De La Sierra, December, 1996, in particular para. 8 and 10(d), access at: <http://www.state.gov/p/wha/rls/141347.htm> (last accessed 9 June 2013).

⁸⁹⁴ Eric Dannenmauer, "A European Commitment to Environmental Citizenship: Article 3.7 of the Aarhus Convention on Public Participation in International Forums, Yearbook of International Environmental Law Vol. 18 (2007), at 44, noting the interest of the OAS.

⁸⁹⁵ Organization of American States. (2001) Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development, access at: www.oas.org/dsd/PDF_files/ispenglish.pdf (last accessed 13 June 2013).

⁸⁹⁶ Yasmine Shamsie (2000), "Engaging with Civil Society: Lessons from the OAS, FTAA, and Summits of the Americas", available at <http://www.iatp.org/documents/engaging-with-civil-society-lessons-from-the-oas-ftaa-and-summits-of-the-americas> (accessed 13 June 2013). For a deeper analysis of the process leading to the

framework as well as a set of recommendations aimed at the governments of the region. The second principle of the policy framework emphasizes the importance of the principle of *inclusiveness* in relation to participation in decision-making.⁸⁹⁷ It also calls for affirmative actions to be adopted in order to guarantee the full enjoyment of the right to participate by marginalized groups, including women and indigenous peoples.

Special efforts should be made to include the participation of the private sector, and to create equal opportunities for women and vulnerable groups such as indigenous populations, youth, disadvantaged racial and ethnic minorities (including disadvantaged populations of African descent), and other traditionally marginalized groups.

The recommendations contained in the IPS further elaborate on the need for this issue to be considered in legal frameworks, in particular through the extension of legal standing to all marginalized actors who might have an interest in a particular decision.⁸⁹⁸ While the IPS does identify a set of objectives, it remains of a voluntary nature and leaves to each government the responsibility of defining the measures necessary to achieve these principles. Also, contrary to the Aarhus Convention, it only focused on participation at the national level and falls short of providing recommendation on how to promote principle through the existing regional instruments.⁸⁹⁹

At the 10 years anniversary of the Santa Cruz Declaration, the members of the OAS adopted the Declaration of Santa Cruz +10.⁹⁰⁰ In relation to the implementation of the participatory rights of the public, the declaration emphasizes the principle of non-discrimination and the need to *promote institutional transparency, gender equity, and equal opportunities for all vulnerable groups.*⁹⁰¹

In this process leading to the Rio+20 conference, the governments of the region reiterated their commitment to principle 10 as well as to the need to pay particular attention to marginalized groups:

*Recognize the importance of the participation and the contribution of civil society to sustainable development, in particular, women, indigenous peoples and local and traditional communities, and encourage all stakeholders to engage more fully with the actions of Governments.*⁹⁰²

IPS, see Eric Dannenmaier, "Democracy in Development: Toward a Legal Framework for the Americas", *Tulane Environmental Law Journal* 11 (1) (1997)

⁸⁹⁷ See IPS, para. 4.

⁸⁹⁸ IPS, recommendation 2.2.

⁸⁹⁹ For more background and analysis of the IPS, see Jorge Cailloux, Manuel Ruiz and Isabel Lapena, "Environmental Public Participation in the Americas", in Carl E. Bruch, "The New "public": The Globalization of Public Participation" *Environmental Law Institute* (2002), pp. 105-120

⁹⁰⁰ Adopted at the First Inter-American Meeting of Ministers and High-level authorities on Sustainable Development, December 4-5, 2006, CIDI/RIMDS/DEC.1/06 rev. 1.

⁹⁰¹ Ibid, para 17-19.

⁹⁰² Conclusions of the Latin American and Caribbean Regional Meeting Preparatory to the UN Conference on Sustainable Development, UN Doc. LC/L.3432, Para. 12.

This legacy of regional cooperation aimed at the promotion of participatory rights found a new momentum in parallel to the Rio+20 Conference on Sustainable Development with the adoption by 10 Latin American and Caribbean states of the “Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development”.⁹⁰³ The declaration expressed the commitment of the signatory states to *launch a process to explore the feasibility of adopting a regional instrument, ranging from guidelines, workshops and best practices to a regional convention open to all countries in the region and with the meaningful participation of all concerned citizens [and] commit to drafting and implementing a Plan of Action 2012-2014, with the support of the Economic Commission for Latin America and the Caribbean (ECLAC) as the technical secretariat, to work towards such a regional convention or other instrument.*⁹⁰⁴

A first meeting of the national focal points, of civil society experts and of representatives from international organizations was organized four months after the Rio+20 Conference, with the financial support of the German government. During this meeting, the participants adopted a Roadmap to ensure the effective implementation of the commitment expressed in the declaration. Three countries were also allocated the task to draft a Plan of Action to 2014, which was later adopted by the focal points at their second meeting in April 2013. The action plan identifies the three areas of action for the signatories: the promotion of the Rio+20 declaration, the strengthening of the regional process, and the implementation at the national level.⁹⁰⁵ The action plan also establishes working modalities for the signatories, including the creation of two working groups and procedures allowing for the active participation of civil society representatives to the process. Currently, 14 countries have joined the process and expressed commitment to the declaration, with an additional two countries from the region currently following the process as observers.⁹⁰⁶

Neither the Rio Declaration on the implementation of the principle 10, nor the roadmap or the action plan includes specific reference to the importance of ensuring and facilitating the enjoyment of the participatory rights by marginalized groups. A paper mandated by the Latin American signatories states and prepared by ECLAC as a background document to this process highlighted the need for affirmative actions to be adopted to support marginalized groups.⁹⁰⁷

⁹⁰³ See Note verbale dated 27 June 2012 from the Permanent Mission of Chile to the United Nations addressed to the Secretary-General of the United Nations Conference on Sustainable Development, A/CONF.216/13.

⁹⁰⁴ Ibid, pp 2-3.

⁹⁰⁵ Access on ECLAC webpage: http://www.eclac.org/rio20/noticias/noticias/8/49428/2013-208_PR10-First_draft_of_the_plan_of_action.pdf (last accessed 15 June 2013).

⁹⁰⁶ The original ten signatories to the declaration were: Chile, Costa Rica, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru, Dominican Republic and Uruguay. Additionally, four states have recently joined the process: Brazil, Colombia, Honduras and Trinidad and Tobago. Argentina and El Salvador have attended recent meetings under the status of observers.

⁹⁰⁷ The Rio+20 declaration provided the mandate for the preparation of this document, see A/CONF.216/13, p. 3.

*To this end, steps must be taken to build the capacity of groups of persons that have traditionally been underrepresented in participatory processes; this includes women as well as indigenous populations and communities and involves recognizing the various languages and cultures that exist in the region.*⁹⁰⁸

Finally, it is useful to highlight the links between the two regional processes. The Aarhus Convention has not only offered a source of inspiration to the Latin American ongoing process but has also provided direct input as the Aarhus secretariat shared best practices resulting from its experience. The Aarhus Convention is explicitly referred in the Roadmap as one of the international processes from which to consider the experience and practices.⁹⁰⁹ A member of the Aarhus Secretariat also attended both meetings of the national focal points in order to present the working methods of the Aarhus Convention, emphasizing the importance of the working group and its task forces to drive the work undergone under the convention. The importance of the effective participation of civil society representatives in the work of the bodies established under the convention was also highlighted.⁹¹⁰

Recommendations

- **Remove barriers to accession by non-UNECE members**, Finland could advocate for the removal of the conditioning of accession by other countries to the approval of Aarhus parties. Such a move could signal a strong willingness to broaden the geographic scope of the convention as well as lower the uncertainty associate with the accession process of non-UNECE countries.
- **Support directly with the non-parties** to promote their implementation of the Aarhus principles and, possibly, to assist their accession to the convention. The relevance of such support is for instance exemplified in Mongolia's request in 2011 for an in-country visit by Aarhus parties experts.
- **Provide support to the Latin American process**, both through supporting a strong mandate for the Aarhus Secretariat to continue to share its experiences and to highlight relevant best practices, as well as through bilateral assistance, for instance to enable the participation of women and indigenous peoples representatives in the process established under the Rio+20 Latin American Declaration in Principle 10.

⁹⁰⁸ Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean: situation, outlook and examples of best practices, LC/L.3549/Rev.1, 12 April 2013, at 45.

⁹⁰⁹ Roadmap for the formulation of an instrument on the application of principle 10 in Latin America and the Caribbean, para. 1.c . Available at http://www.eclac.org/prensa/noticias/comunicados/7/48317/2012-855-Rio+20_Road_map.pdf (accessed 15 June 2013).

⁹¹⁰ Presentation access on ECLAC webpage: http://www.cepal.org/rio20/noticias/noticias/8/49428/FM_2nd_Meeting_of_LAC_focal_points_April_2013.pdf (accessed 15 June 2013).

3.1.2.Reform of the UNEP and renewed mandate relating to stakeholders engagement

3.1.2.1. *Participation of stakeholders in UNEP's work*

The decision to strengthen UNEP was one of the major outcomes related to the second main theme (Institutional Framework for Sustainable Development) of the 2012 Conference on Sustainable Development. During the process leading to the conference, two visions emerged to define the scope of such a reform. Some states proposed an upgrading of UNEP as a UN specialized agency while others favoured a reform limited to the establishment of a universal membership for UNEP and an increase of resources.⁹¹¹

The final outcome of the Rio+20 conference endorsed the second proposal with a greater focus on the providing a new mandate to UNEP rather than to upgrading the Program to a new level in the UN structure.⁹¹² Among other elements, this new mandate provides opportunities for UNEP to play a more active role in ensuring the participatory rights of stakeholders.

88 h) Ensure the active participation of all relevant stakeholders, drawing on best practices and models from relevant multilateral institutions and exploring new mechanisms to promote transparency and the effective engagement of civil society.

On December 2012, the second committee of the UN General Assembly endorsed this specific paragraph of the Rio+20 outcome document and decided to *strengthen and upgrade* UNEP in accordance with paragraph 88.⁹¹³ Between the confirmation of this mandate and the first meeting of its universal governing council, UNEP organized a stakeholders' consultation to assess its current procedures enabling for public participation and access to information. While the survey noted a relative level of satisfaction with the current practices at UNEP, some specific areas for improvements were highlighted, in particular in relation to the need to engage stakeholders outside of the main policy sessions and on the format of stakeholders representations.⁹¹⁴ UNEP also reviewed the best practices related to stakeholders engagement and access to information implemented in eight selected international institutions (UN-REDD, UN-DESA, World Bank, UNDP, ILO, FAO Committee on World Food Security, UNAIDS, and the Global Fund to fight HIV, Tuberculosis and Malaria).⁹¹⁵ Finally, UNEP organized of an Expert Group Meeting on

⁹¹¹ Maria Ivanova, "Institutional design and UNEP reform: historical insights on form, function and financing", *International Affairs* 88: 3, (2012), at 566 ff.

⁹¹² Rio+20 outcome document, A/RES/66/288, Annex, para. 88.

⁹¹³ UNGA documents, 13 December 2012, A/67/437/Add.7.

⁹¹⁴ Preliminary report of the Survey on Models and Mechanisms of Civil Society Participation in UNEP, access at: http://www.unep.org/civil-society/Portals/24105/documents/GMGsf/GMGsf%2014/Survey_Report_12Feb2013.pdf (accessed 4 June 2013).

⁹¹⁵ Report of the Expert Group Meeting on "Models and Mechanisms of Civil Society Participation in UNEP: Building on the Experiences of Multilateral Organisations", Annex, January 22 - 23, 2013, Geneva, Switzerland. access at: http://www.unep.org/civil-society/Portals/24105/documents/GMGsf/GMGsf%2014/Report_of_Expert_Group_Meeting_13Feb2013.pdf (accessed 5 June 2013).

“Models and Mechanisms of Civil Society Participation in UNEP: Building on the Experiences of Multilateral Organisations”.⁹¹⁶

The 14th Major Groups and Stakeholder Forum gathering civil society representatives from all major groups and from all regions adopted by consensus a set of Principles for Stakeholder Engagement and Transparency at UNEP that were submitted to the Governing Council for consideration in the development of a new institutional set-up of UNEP.⁹¹⁷ These eleven principles highlight both in the importance of the full implementation of the procedural rights of stakeholders in relation to all phases of the UNEP’s work, including agenda setting, decision and policy-making, and implementation. They also emphasized the importance of the involvement of stakeholders in any decisions relating to the definition of procedures for their participation.

At its first universal session, UNEP’s Governing Council dedicated a significant amount of its proceedings to negotiating the terms of the implementation of the mandate it received in para. 88 of the Rio+20 outcome, including in relation to the strengthened participation of stakeholders. These negotiations did not result in the concrete decision, for instance in the form of the adoption of new modalities or by mandating the UNEP Executive Director to develop such modalities, that would have ensured the effective and immediate implementation of the mandate provided in para. 88(h) without the need for further political negotiations.

However, the Governing Council addressed the issue of the strengthening of stakeholders’ engagement in its decision on institutional arrangements.⁹¹⁸ Firstly, the decision provides that the new governing body of UNEP – renamed United Nations Environment Assembly of the UNEP in order to reflect its universal membership – will have as a function, inter alia, to organize a “multi-stakeholder dialogue” during its 2-days long high level segment.⁹¹⁹ At present, the Major Group and Stakeholders Forum organized prior to the each Governing Council offers an opportunity for multi-stakeholders dialogue but has failed to secure sustained participation by governmental representatives. Paragraph 7 of the decision provides mandates for the establishment and adaptation of processes facilitating stakeholders’ input.

Para. 7 Decides that the governing body will ensure the active participation of all relevant stakeholders, particularly those from developing countries, drawing on best practices and models from relevant multilateral institutions and will explore new

⁹¹⁶ Ibid. As the participants attended the meeting on an individual basis, the outcome of the meeting does not lead to any consensual recommendation but rather highlight various opportunities to strengthen the participation of stakeholders in the work of UNEP.

⁹¹⁷ Principles on Stakeholder Participation in UNEP. Acces at: http://www.unep.org/civil-society/Portals/24105/documents/GMGsf/GMGsf%2014/Stakeholder_participation_principles/Participation_and_Transparency_11_principles_as_adopted.pdf (accessed 12 May 2013).

⁹¹⁸ Decision 27/2, UNEP/GC.27/17, Annex I.

⁹¹⁹ Ibid., para 5.e.

mechanisms to promote transparency and the effective engagement of civil society in its work and that of its subsidiary bodies, inter alia by:

- a) Developing by 2014 a process for stakeholder accreditation and participation that builds on the existing rules of procedure and takes into account inclusive modalities of the Commission of Sustainable Development and other relevant United Nations bodies;*
- b) Establishing by 2014 mechanisms and rules for stakeholders expert input and advice;*
- c) Enhancing by 2014 working methods and processes for informed discussions and contributions by all relevant stakeholders towards the intergovernmental decision making process;*

Finally, the decision addressed the right of access to information as it directed the Executive Director to establish a written access-to-information policy in order to enhance the transparency and openness of the work of the organization.⁹²⁰

The meeting of the Committee of the Permanent Representatives (CPR) scheduled on the 10th of September 2013 will consider the implementation of this decision. In order to build on a participatory approach, this meeting of the CPR will be preceded by an informal consultation with the representatives of stakeholders. The first session of the UNEP Environmental Assembly scheduled in spring 2014 will expected to adopt the decisions prepared by the CPR and ensure the full implementation of the mandate for greater stakeholders engagement contained in the paragraph 88h of the Rio+20 Outcome.

Role of UNEP in Environmental Governance

The previous sub-section focused on the strengthening of stakeholders' participation in UNEP's own decision-making and implementation processes. The following paragraphs consider the role of UNEP in promoting these processes externally, both at the national level as well as throughout international environmental governance.

Building on the affirmation of procedural rights as principle 10 of the Rio Declaration, UNEP governing council emphasized in 2000 the importance of procedural rights in environmental decision making.

*The role of civil society at all levels should be strengthened through freedom of access to environmental information to all, broad participation in environmental decision-making, as well as access to justice on environmental issues. Governments should promote conditions to facilitate the ability of all parts of society to have a voice and to play an active role in creating a sustainable future.*⁹²¹

⁹²⁰ Ibid., para. 17.

⁹²¹ Malmö Declaration (2000), Global Ministerial Environment Forum, Sixth Special Session of the Governing Council, Para. 16.

National level

While the UNECE Aarhus Convention constitutes to date the only legally binding agreement focusing exclusively on the promotion of the procedural rights of the public in environmental decision-making, its scope remains regional.⁹²² In order to promote the implementation of principle 10 of the Rio Declaration universally, UNEP's developed "Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters", which were adopted at its eleventh Special Session of the Governing Council in 2010.⁹²³

As early as 2003, the Governing Council mandated the Executive Director to *assess the possibility of promoting, at the national and international levels, the application of principle 10 [...] and determine, inter alia, if there is value in initiating an intergovernmental process for the preparation of global guidelines on the application of principle 10.*⁹²⁴ The process leading to the drafting of the guidelines involved representatives from both civil society and governments. In 2008, UNEP conveyed a Consultation Meeting of Government Officials and Experts, followed by the meeting of UNEP high-level advisors on environmental dispute avoidance and settlement.⁹²⁵

In 2009 UNEP's Governing Council took note of the progress achieved in the preparation of the guidelines and requested the secretariat to complete the drafting process for the following session of the Governing Council.⁹²⁶ The UNEP secretariat thus completed this process and prepared simultaneously, and in consultation with UNEP Senior Advisors Group, a commentary on the guidelines which was annexed to the draft decision submitted to the Governing Council.⁹²⁷

The guidelines were finally adopted at the subsequent governing council in Bali. In its decision SSXI/5 adopting the guidelines, the Governing Council emphasized however their voluntary nature.⁹²⁸ It also requested UNEP Secretariat to disseminate those to all countries accompanied by the commentary on the implementation of those guidelines as well as requested the Executive Director to provide support to all countries that would request so.⁹²⁹

The 26 guidelines define in relative general terms the minimum requirements that states should incorporate in domestic legislation for the effective implementation of the three rights defined in the principle 10 of the Rio declaration. While the guidelines themselves do not provide any specific recommendation in relation to strengthening their

⁹²² See sub-section O, "3.1.1.2. Promoting the Aarhus Principles outside of the UNECE".

⁹²³ Adopted by the Governing Council of the United Nations Environment Programme. in decision SS.XI/5, UNEP/GCSS.XI/11, part A.

⁹²⁴ Decision 22/17, UNEP/GC.22/11, Governance and law, II B para. 3.

⁹²⁵ Reports on International Organizations and Bodies - UNEP, *Yearbook of International Environmental Law*, Volume 19; Volume 2008, at 705.

⁹²⁶ Decision 25/11, UNEP/GC.25/17, Environmental law, II, para 1-2.

⁹²⁷ See Annex 1, UNEP/Env.Law/IGM.Acc/1/2.

⁹²⁸ Decision SS.XI/5, UNEP/GCSS.XI/11, part A, para. 1.

⁹²⁹ Ibid, para. 4.

implementation in relation to vulnerable groups, this issue is partly addressed in the commentary further defining the right to participation. The commentary to guideline 8 (which defines this right in most general terms) supports affirmative action in order to ensure the participation of some groups and members of the public concerned by a decision-making process. The commentary recommends specific measures to address language barriers as well as to secure participation from women.⁹³⁰

*It is also important to ensure involvement and participation by both men and women. Specific measures should be considered to ensure equal participation in this regard since participation could be affected by power imbalances within communities, household family relations and different time use by men and women, which could hamper effective participation.*⁹³¹

Finally in relation to the right of access to justice, the commentary to guideline 26, which encourages alternative dispute resolution mechanisms, highlight the need to consider the *relevance and use of traditional, community-level [...] mechanisms and processes*.

UNITAR, the UN Institute for Training And Research, has built on the Bali Guidelines in its Global Programme to strengthen national implementation of Principle 10. Currently, UNITAR is running projects with ten partner countries in Latin America and in Africa.⁹³² The Global Programme is focused on general promotion of the implementation of the principle 10 and its guidance document makes no special references to specific considerations for groups such as women and indigenous people.⁹³³

While the Guidelines constitute a positive step for the promotion of principle 10, observers have highlighted that the impact of the Guidelines remain limited in practice as their existence continues to be largely unknown to the relevant domestic authorities.⁹³⁴ While UNEP, UNITAR and a few other bodies are implementing projects to specifically promote the application of the guidelines, the guidelines remain largely ignored by most relevant actors of environmental governance.

International level

⁹³⁰ The commentary to the guideline 9 further address the need to provide adequate opportunities for all members of the public, taking into consideration various levels of literacy and minority languages, including through the organization of oral hearings.

⁹³¹ Commentary to the guideline 8.

⁹³² These countries are: Costa Rica, Dominican Republic, El Salvador, Honduras, Nicaragua, Panama, Botswana, Democratic Republic of Congo, Mali.

⁹³³ The document only highlights women representatives as potential stakeholders that could be invited to the consultation process organized to prepare a national implementation profile. "Preparing a National Profile to Assess National Capacities for Implementation of Principle 10 of the Rio Declaration: Guidance Document", UNITAR (2008), access at http://www.unitar.org/egp/sites/unitar.org/egp/files/p10_EN_guidance.doc_np.final_12.2008.pdf (accessed 6 May 2013).

⁹³⁴ Banisar, David, Sejal Parmar, Lalanath de Silva, and Carole Excell. "Moving from Principles to Rights: Rio 2012 and Access to Information, Public Participation, and Justice." *Sustainable Development Law & Policy* 12, no. 3 (2012), at 10.

Additionally, UNEP has also conducted work in order to promote the procedural rights of stakeholders at the international level. In 2002 already, UNEP produces an analysis of provisions of international environmental instruments referring to the three pillars of Rio principle 10.⁹³⁵ The survey covered global agreements, regional conventions as well as soft-law instruments. Its main finding highlighted the fact that a widespread support for procedural rights could be found in existing agreement. However the report also noted that the third pillar – the right to a judicial remedy in environmental matters – was much less referenced in international instrument than the other two.⁹³⁶

More recently, the renewed mandate of UNEP adopted at the Rio+20 conference also offers an opportunity for the program to play a more proactive role among the United Nations system. Governments indeed decided to:

*enhance the voice of the United Nations Environment Programme and its ability to fulfil its coordination mandate within the United Nations system by strengthening its engagement in key United Nations coordination bodies and empowering it to lead efforts to formulate United Nations system-wide strategies on the environment.*⁹³⁷

The preparatory process leading to the Rio+20 convention highlighted a significant momentum for a strengthening of the implementation of principle 10. During the early stages of the process, the issue of the participation of stakeholders revealed one of the most consensual themes among countries and non-state actors.⁹³⁸

This importance was also highlighted in Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability resulting from the World Congress on Justice, Governance and Law for Environmental Sustainability organized by UNEP. The Declaration highlights the importance of procedural rights for the achievement of environmental sustainability. Interestingly from the point of view of this report, it also highlights the position of specific groups.

*Justice, including participatory decision-making and the protection of vulnerable groups from disproportionate negative environmental impacts must be seen as an intrinsic element of environmental sustainability.*⁹³⁹

⁹³⁵ Report on the implementation of the decision of the 21st session of the GC/GMEF, international legal instruments reflecting provisions contained in principle 10 of the Rio Declaration, UNEP/GCSS.VII/INF/7.

⁹³⁶ Ibid, at 3.

⁹³⁷ Rio+20 outcome document, A/RES/66/288, Annex, para. 88(c).

⁹³⁸ According to a review of the submissions submitted to the zero-draft, “participation” was the third most consensual topic with a total of 334 submissions referring to it out of a total of 677 submissions. See “Rio+20: Analysis of Zero Draft Submissions”, Stakeholder Forum, January 2012, access at: <http://www.stakeholderforum.org/fileadmin/files/Rio%20Zero%20Draft%20Submission%20Analysis%20-%20FINAL.pdf> (accessed 25 May 2013).

⁹³⁹ Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, page 2. Access at http://www.unep.org/rio20/Portals/24180/Rio20_Declaration_on_Justice_Gov_n_Law_4_Env_Sustainability.pdf (accessed 7 June 2013).

This declaration fed into the work of the first universal session of the governing council and inspired the adoption of a decision on “advancing justice, governance and law for environmental sustainability”.⁹⁴⁰ The decision contains strong language mandating UNEP’s executive director to take an active role in the promotion of principle 10 throughout the UN system as it requested it:

*to lead the United Nations system and support national Governments upon their request in the development and implementation of environmental rule of law with attention at all levels to mutually supporting governance features, including information disclosure, public participation; [...]*⁹⁴¹

Recommendations

- Finland should play a proactive role to promote **more effective participation of stakeholders throughout all of the aspects of UNEP’s work**, including policy-making and implementation. This proactive role should extend beyond the sessions of UNEP’s governing body and be sustained throughout all relevant stages of decision-making in UNEP, including within EU coordination structure and during the meetings of the Committee of Permanent Representatives.
- Building on past experiences of UNEP and on the stakeholders recommendations mentioned previously, Finland could request that any new procedure affecting the capacity of the public to intervene is designed and negotiated in a **transparent and participatory manner**.
- In order to ensure that the implementation of the para. 88h fully address the importance of **strengthening the participation of vulnerable and marginalized groups** – such as women and indigenous peoples, Finland could request for the implementation by the UNEP secretariat of additional affirmative measures in order to adoption including through the implementation of positive measures and additional capacity building activities.
- Finland could request UNEP to play an active role in promoting discussions towards the adoption of a **global instrument on principle 10**, based on UNEP’s mandate related to the promotion of the rule of law and good governance.

⁹⁴⁰ Decision 27/9: Advancing justice, governance and law for environmental sustainability, UNEP/GC.27/17.

⁹⁴¹ Ibid, para. 6(a).

Chapter 4. Climate Change Regime

Despite the unequivocal acknowledgement of human rights implications of both climate change and response measures, the UN climate regime has remained particularly hermetic to references to human rights frameworks. Despite two decades of fruitful normative production and the adoption of hundreds of decisions by its main bodies, only one decision explicit refers to human rights obligations of the states parties to the convention and to international instruments.

Following the adoption in 2007 of the Bali Action Plan and the opening of a new set of negotiations to deliver a new and legally binding agreement in 2009, some parties – in particular from Latin America – have advocated for the recognition of the human rights implications of climate change.⁹⁴² Civil society groups also supported parties in suggesting wording to be included in the outcome of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) and proposing procedural solutions to provide adequate participation of the public to the negotiations and to guarantee the access to a redress mechanism.⁹⁴³ Additionally, the Human Rights Council also played a proactive role in raising the issue of the interconnectedness of human rights and climate change on the agenda of the climate talks. Indeed, the Council did not only adopt decisions and commission research on this interaction,⁹⁴⁴ but it also placed a special emphasis on working together with the UNFCCC secretariat and in informing UNFCCC parties of its own proceedings. Several resolutions of the Council request the Office of the High Commissioner on Human Rights to consult the UNFCCC secretariat when collecting information.⁹⁴⁵ It also repeatedly requested that the OHCHR to inform the UNFCCC COP of the outcomes of the discussions and workshops organized by the Human Rights Council.⁹⁴⁶ Furthermore, the Human Rights Council recognized the role of the UNFCCC in contributing to the protection of human rights. In its report on the implications of climate change for the exercise of human rights, the Council noted that effective international cooperation to enable the “*full, effective and sustained implementation of the UNFCCC in accordance with the provisions and principles of the Convention is important in order to support national efforts for the realization of human rights implicated by*

⁹⁴² For a comprehensive account of the negotiations leading to the inclusion of a right language in the Cancun agreement, see Lavanya Rajamani, “The Increasing Currency and Relevance of Rights-Based Perspectives in the International Negotiations on Climate Change”, *Journal of Environmental Law* 22:3 (2010), 400-406

⁹⁴³ For an insider account of the negotiations of such right-based language in the climate change process, see Svitlana Kravchenko, “Procedural Rights as a Crucial Tool to Combat Climate Change”, 38 *Georgia Journal of International and Comparative Law* (2010).

⁹⁴⁴ See HRC Resolution 7/23, Human rights and climate change, UN Doc. A/HRC/RES/7/23, 28 March 2008.

⁹⁴⁵ *Ibid.*, para. 1.

⁹⁴⁶ United Nations Human Rights Council (HRC) Resolution 10/4, Human Rights and Climate Change, UN Doc. A/HRC/10/L.11, 12 May 2009, para. 2 and HRC Resolution 18/22, UN Doc. A/HRC/18/L.26/Rev.1, 28 September 2011, para. 4(b).

climate change-related impacts.”⁹⁴⁷

Consequently, human rights language was inserted in Cancun in the outcome of the Ad-hoc Working Group on Long-term Cooperative Action. Firstly, and of particular relevance to the present report, the COP “*not[ed] resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability*”.⁹⁴⁸

Secondly, and most importantly, the COP “*emphasize[d] that Parties should, in all climate change-related actions, fully respect human rights*”.⁹⁴⁹ As this reference was inserted in the Shared Vision section of the Cancun Agreements, it is relevant to all aspects of the climate regime, including mitigation, adaptation, technology and financial support.

Finally, a more specific safeguard was defined in the context of the Reduction of Emissions from Deforestation and forest Degradation (REDD), the Cancun Agreements calling for the “*[r]espect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples*”.⁹⁵⁰

All other instances of references to individual rights in the decisions and reports of the main bodies established under the convention actually address either issues of property rights and of land rights in relation to the capacity to register a Clean Development Mechanism project.

The following section will address the relevance of human rights – and in particular the rights of indigenous peoples and women – in various areas of work of the UN climate regime. For each area of work, we have provided a brief introduction to the current state of play of institutional and normative developments, highlighted existing references to indigenous knowledge and rights, and finally suggested recommendations for Finland in order to better implement its human rights strategy.

In order to enable a deeper focus on several key elements of the UN climate framework, other areas of work have been voluntarily excluded from the report, including capacity building, awareness and information, and technological transfers. Further research could be commissioned in order to consider the human rights implications of these areas of work, in particular from a women and indigenous people perspective.

⁹⁴⁷ HRC Resolution 18/22, UN Doc. A/HRC/18/L.26/Rev.1, 28 September 2011,.

⁹⁴⁸ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 8, preamble.

⁹⁴⁹ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 8.

⁹⁵⁰ Decision 1/CP.16, *supra*, note 176, Appendix 1. 2(c), Guidance and safeguards for policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.

4.1. Stakeholders procedural rights at the UNFCCC

The Convention provides that all parties have the obligation to “encourage the widest participation in this process, including that of non-governmental organizations.”⁹⁵¹ The general extent of observers’ rights to participate in the UNFCCC is defined by the Conference of the Parties.⁹⁵² The category of observers includes governments who are not party to the convention (or to the Kyoto Protocol, in relation to processes established under the protocol), intergovernmental organizations, and stakeholders.

The Subsidiary Bodies consider observers’ consultation and participation to the intergovernmental process on a cyclical basis.⁹⁵³ Such discussion typically continues over the course of several sessions, including a first session dedicated to a general statement by interested parties, a round of consultations with both parties and stakeholders – through submissions and/or the organizing of a workshop – and a final decision by the subsidiary body, as well as a possible endorsement of the decision by the COP itself.

4.1.1. Access to Information

In climate change negotiations, NGOs have access to official documents in a similar manner as governmental delegations. Documents distributed in negotiating rooms are distributed to civil society delegates once all parties are provided with the text. Official documents are also made available on the webpage of the convention as soon as they are released. In the past, the default practice regarding access to non-official documents distributed in closed meetings, such as the latest non-papers proposed by facilitators, was to not release them to stakeholders.⁹⁵⁴ Since 2010, this practice has been reversed so that civil society representatives also have access to informal negotiating texts except when parties or presiding officers explicitly decide otherwise. In order to increase the transparency of the process and to allow those who are not attending a meeting to follow the discussions, the secretariat has increasingly utilized webcasts – a practice for which the UNFCCC has been recognized as a example of a best practice.⁹⁵⁵ In her assessment of the

⁹⁵¹ UNFCCC, Art. 4.1(i).

⁹⁵² Ibid., Art. 7.6.

⁹⁵³ The Subsidiary Body for Scientific and Technological Advice (SBSTA) was mandated to consider this issue as part of its agenda until 1997, after which this fell under the competence of the Subsidiary Body for Implementation (SBI) according to the division of labour between the two bodies. Report of SBSTA on the work of its 7th session, FCCC/SBSTA/1997/4, para. 37(b).

⁹⁵⁴ For a classification of the various types of official and non-official documents, see Joanna Depledge, *The organization of global negotiations: Constructing the climate change regime*, Earthscan (2005), table 11.1.

⁹⁵⁵ Good practice and challenges for public participation in international forums: Report prepared by the secretariat in cooperation with the Chair of the Task Force on Public Participation in International Forums, ECE/MP.PP/2011/10, 9 March 2012, para. 40. Webcasts currently covers plenary sessions of the main working bodies of the Convention, and some of the special events and workshops. Webcasts are also used to cover some sessions of the meetings of the Clean Development Mechanism Executive Board and the Joint Implementation Joint Committee. In its conclusions on the enhancement of the participation of observers, the SBI has recently

COPs' legitimacy and the importance of transparency in the body's proceedings, Brunnée noted the role played by the online streaming of these meetings in this context, as well as the publication of semi-official reports "Earth Negotiation Bulletin" by the non-governmental organization IISD.⁹⁵⁶

4.1.2. Access to Negotiations

The observer status is necessary for intergovernmental and non-governmental organizations that are interested in attending meetings and participating in the process. Non-governmental organizations, as well as non-UN intergovernmental bodies, interested in participating in the negotiating process may submit an application to the secretariat in order to be admitted as an observer organization. In order to be admitted, organizations must demonstrate that they are "qualified in matters covered by the Convention."⁹⁵⁷ Once accredited, an organization may then nominate representatives to attend any negotiation meetings. There is no formal limit on the number of delegates that each organization may originally nominate for a particular meeting. However, in order not to exceed the physical capacity of the venues and avoid the adoption of ad-hoc measures as implemented during the COP-15, the secretariat has established since 2010 a quota system through which it allocates a specific number of accreditation badges to each organization proportionally to the number of delegates that they originally accredited.⁹⁵⁸

According to the draft rules of procedure, the COP meetings are held in public unless otherwise decided.⁹⁵⁹ The rules of procedure provide that the subsidiary bodies' meetings are to be held in private, but an interpretative footnote comments on this rule,

noted this practice and requested the secretariat, "subject to the availability of resources and where appropriate, to increase the number of meetings that are webcast", Report of the SBI, *supra*, note 107, para. 178(e)ii.

⁹⁵⁶ Jutta Brunnée, "COPing with Consent: Law-Making Under Multilateral Environmental Agreements", 15 *Leiden Journal of International Law* (2002), at 45.

⁹⁵⁷ UNFCCC, *supra*, note 58, Art. 7.6 and Draft Rules of Procedure of the COP and its Subsidiary Bodies, applied provisionally, UN Doc. FCCC/CP/1996/2, 22 May 1996, Rule 7(1).

⁹⁵⁸ In response to concerns expressed by civil society and parties delegates on the impact of the size of the venue for the participation of observers, the SBI also "encouraged hosts of future sessions of the COP and the CMP to consider, in their planning and organization, the size of the venue and the need to facilitate the participation of all Parties and admitted observer organizations". Report of the SBI on its 32nd session, UN Doc. FCCC/SBI/2010/107, para. 166. Representatives under the age of 18 years old can be registered at the discretion of the secretariat, which allows their participation only for specific event and with additional requirements. See UNFCCC, "Guidelines for the Participation of Representatives of Non-governmental Organizations at Meetings of the Bodies of the United Nations Framework Convention on Climate Change" (2003) section A, para. 4, access at: http://unfccc.int/files/parties_and_observers/ngo/application/pdf/coc_guide.pdf (last accessed on 25 May 2013).

⁹⁵⁹ Draft Rules of Procedure of the COP and its Subsidiary Bodies, applied provisionally, UN Doc. FCCC/CP/1996/2, 22 May 1996, rule 30. In practice logistical constraints in the implementation of this rule have been addressed through the use of webcasts and screening of the proceedings of the main sessions of the COP in parallel conference room in order to accommodate a large number of participants.

providing that it is to be interpreted in a manner that permits “duly accredited observers to participate in “private” meetings.”⁹⁶⁰ However, this rule has been interpreted as only applying to plenary sessions – which in practice are often limited to ceremonial opening, crosscutting stocktaking, and the final negotiations during the last hours of each session.⁹⁶¹ Most of the negotiations take place during the sessions in thematic groups established under one or several of the main bodies. Open-ended “contact groups” are the most formal manner of discussions. Observers may attend the contact group meetings unless a third of the parties present at a session request the opposite.⁹⁶² The presiding officers also have the authority to close a contact group to observers at any given time. In order to accommodate complaints from smaller delegations about their inability to attend all simultaneous formal meetings, parties limited to six the number of meetings that may be scheduled in parallel, with only two of those as either plenary meetings or contact group.⁹⁶³ This decision has resulted in an increase of negotiations taking place in more informal setting and thus limiting the scope of implementation of the rules mentioned previously.

Informal working groups allow for more flexible procedural rules and enable more open discussions between negotiators.⁹⁶⁴ Meetings’ facilitators adopted in most cases a default practice in refusing access to observers. The SBI recommended in June 2011 that the first and last informals should be open to observers in case the agenda item under discussion is not the object of a contact group, parties retaining the right to close any such meeting.⁹⁶⁵

Outside the main negotiations sessions, workshops are organized in order to facilitate discussions regarding the technical aspects of the negotiations or in order to foster a more open exchange of views on new approaches. These intersessional workshops typically only involve a limited number of parties and do not constitute an integral part of the official process. The presence of observers at these meetings is particularly relevant as their expertise and perspective may promote new thinking in the discussions.⁹⁶⁶ As they are organized on an ad-hoc basis, participation rules may vary at the discretion of the chair of the subsidiary body conveying the workshop and depending on its nature and substance. In 2002, the SBI requested that the chairs of the subsidiary bodies and workshops, as well as the secretariat, “promote transparency and observer participation, while safeguarding

⁹⁶⁰ For the reference to a prior discussion by the Intergovernmental Negotiating Committee on this issue, see Report of the Committee on its Eight Session, A/AC.237/41, paras. 105 and 106(c).

⁹⁶¹ For an example of the use by presiding officers of diverse degree of openness towards observers in their meetings, see Joanna Depledge, *The Organization of Global Negotiation: Constructing the Climate Change Regime*, Earthscan (2005), at 218.

⁹⁶² Decision 18/CP.4, Attendance of Intergovernmental and Non-governmental Organizations at Contact Groups, UN Doc. FCCC/CP/1998/16/Add.1, 25 January 1999, para. 1.

⁹⁶³ Report of the SBI on its 32nd session, UN Doc. FCCC/SBI/2010/10, para. 164.

⁹⁶⁴ Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures*, Cambridge University Press (2004), at 453.

⁹⁶⁵ Report of the SBI on its 34th session, FCCC/SBI/2011/7, para. 167.

⁹⁶⁶ Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures*, Cambridge University Press (2004), at 462.

the effectiveness of workshops” and adapt the number of observers attending based on the nature of each workshop.⁹⁶⁷ More recently, the SBI called for observers’ enhanced participation in workshops and invited the meetings’ chairs to “make greater use of observer input”⁹⁶⁸ and “invite, time permitting, observer organizations to make presentations.”⁹⁶⁹

4.1.3. Public Participation

Stakeholders are invited to make interventions in the plenary sessions of the convention’s main working bodies. In order to channel the perspective of all stakeholder groups, while limiting the number of interventions, one intervention is traditionally invited from each constituency that is recognized by the secretariat. Yamin and Depledge described this right as the implementation of the right to participate provided in the rules of procedure.⁹⁷⁰ This participatory right is, however, limited. It is not guaranteed in relation to all the working bodies and statements addressing the Subsidiary Bodies or the Ad-Hoc Working Groups are most of the time invited at the discretion of the chair and conditioned by the availability of time. The SBI recently invited presiding officers to “seek opportunities” for such interventions when time allows.⁹⁷¹ In these bodies, chairs may invite general statements or requests the stakeholders to more specifically address one of the discussed agenda items.⁹⁷²

Written submissions are often invited by working bodies in between sessions in order to provide views and information that are useful for an upcoming discussion.⁹⁷³ In 2004, the SBI agreed that the calls for submission would be extended to stakeholders “where appropriate and on the understanding that such submissions would not be issued as official documents, but would be made available on the secretariat web site.”⁹⁷⁴ In 2011, in

⁹⁶⁷ Report of the SBI on its 17th Session, FCCC/SBI/2002/17, 13 February 2003, paras. 50(c) and (d). In practice, the later request is managed through the involvement of the constituencies, which are often expected to nominate a maximum of one or two representatives among their rank for a given workshop.

⁹⁶⁸ Report of the SBI on its 32nd session, FCCC/SBI/2010/10, para. 178 (a) ii.

⁹⁶⁹ Ibid, para. 176.

⁹⁷⁰ See Draft Rules of Procedure of the COP and its Subsidiary Bodies, applied provisionally, FCCC/CP/1996/2, 22 May 1996, rule 7(2), providing that observers may, upon invitation of the President, participate without the right to vote in the proceedings of any session in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the session object.

⁹⁷¹ Report of the SBI on its 32nd session, FCCC/SBI/2010/10, para. 178(a)ii.

⁹⁷² In the past, observers were requested to submit their interventions in advance to facilitate interpretation. Taking into account concerns expressed about the difficulties to address most recent issues on the agenda due to this rule, this practice was suspended in 2011. In more limited cases, civil society delegates are sometimes invited to contribute directly to the discussions of contact groups.

⁹⁷³ The faculty to provide written submission is the only form of participation authorized for non-accredited organizations as calls for submissions might in exceptional cases be open to any relevant stakeholder when explicitly provided by a working body, see for instance, Article 6 of the Convention: Draft conclusions proposed by the Chair, FCCC/SBI/2011/L.6, para. 2.

⁹⁷⁴ Report of the SBI on its 12th Session, FCCC/SBI/2004/10, para. 104.

responding to concerns expressed by NGO representatives on the lack of accessibility of their submission to the UNFCCC website, the SBI requested that the secretariat, when feasible, “post submissions from observer organizations on the UNFCCC website in a way that makes them accessible to Parties”, a requested implemented by the secretariat in the first semester of 2013.⁹⁷⁵ During the sessions, written materials may only be distributed at organizations’ exhibits or, if submitted in advance, at a dedicated desk. The distribution of all other written material is officially prohibited.⁹⁷⁶ Observer organizations are also allowed to organize more visual demonstrations within the venues of the negotiations within strict limits imposed by the secretariat.⁹⁷⁷ Finally, the secretariat enables observer organizations to obtain exhibit booths within the conference venues and to organize side events during the session. Both of these opportunities have been identified as valuable means for stakeholders to share their views with governmental delegates and with other representatives of the public.

4.1.4. Women’s Participation in UNFCCC

Until recently, women organizations have had only limited opportunities to provide input into the climate change process independently from the input provided by other groups from civil society.⁹⁷⁸ In a 1997 note on mechanisms for consultations with non-governmental organizations, the UNFCCC secretariat noted that the recognition of constituencies of NGOs was “an important tool in the management of NGO participation, also dating back to INC I”.⁹⁷⁹ At the time of this first formal discussions in the UNFCCC process related to the structuring of civil society participation, only three constituencies were recognized: Environmental NGOs, business and industry, and local authorities. In subsequent sessions, the parties noted that this grouping was not satisfactorily and

⁹⁷⁵ Ibid, para. 178(d).i.

⁹⁷⁶ UNFCCC, “UN Security Guidelines related to Media Actions, Distribution of Publicity Materials, and Use of UN Emblem at the UNFCCC Conferences”, access at: http://unfccc.int/files/parties_and_observers/ngo/application/pdf/un_security_guidelines.pdf (last accessed on 12 April 2013), at 1.

⁹⁷⁷ These guidelines for participation were established by the secretariat based on the general UN guidelines and in consultation with NGOs representatives. NGOs have raised concerns, for instance, against the systematic prohibition of actions naming the World Bank, as potentially constitutive of harassment. See Report of the Compliance Committee on its 35th meeting, ECE/MP.PP/2011/10, 9 March 2012, para. 111. The UN security and the secretariat retain the authority to exclude provisionally or definitely any delegates or organizations breaching the codes of conduct. UNFCCC, “Guidelines for the Participation of Representatives of Non-governmental Organizations at Meetings of the Bodies of the United Nations Framework Convention on Climate Change”, 2003, access at: http://unfccc.int/files/parties_and_observers/ngo/application/pdf/coc_guide.pdf (last accessed on 25 May 2013).

⁹⁷⁸ In her studies of civil society interventions during the first nine COPs, Joanna Depledge does not note any intervention by a women representative. Joanna Depledge, *The organization of global negotiations: Constructing the climate change regime*, Earthscan (2005), at 220.

⁹⁷⁹ Mechanisms for consultations with non-governmental organizations, note by Executive Secretary, FCCC/SBI/1997/14/Add.1.

concluded that a better set of constituencies could be developed, for instance on the basis of the recognition of nine major groups in section three of Agenda 21. The Subsidiary Body on Implementation also “requested the secretariat to continue consultations with representatives of different non-governmental organizations to arrive at an improved set of constituencies, possibly to be confirmed by the SBI at its tenth session”.⁹⁸⁰

The UNFCCC secretariat defined the criteria for the recognition of a group of stakeholders as a constituency as follows:

*a critical mass of member organizations; creation of an operative channel (focal point) for communication with the secretariat; distribution of information to members; provision of consolidated/coordinated inputs on issues; and regular participation of the member organizations at sessions.*⁹⁸¹

The recognition of the constituency status to a major group allows the group to benefit from additional logistical support from the UNFCCC secretariat, from additional participation rights including invitation to thematic workshops and interventions in negotiating sessions as well as facilitated interactions with the negotiations officials. It is only with the provisional recognition of the youth, farmers and women as constituencies prior to the Copenhagen climate summit in 2009 that the secretariat achieved the objective of recognizing nine constituencies reflecting in the nine major groups identified in Agenda 21.⁹⁸²

The woman and gender caucus had begun to organize regular coordination meetings at COP-11 in Montreal and its activities grew at COP-13 with the organization of a program of public events. At the COP-14 in Poznan, the decision was made by the caucus to seek constituency status. According to its constituting charter, the constituency “draws upon global commitments to gender equality and women’s rights, especially as they relate to climate change, and toward the achievement of the Millennium Development Goals and related commitments and Conventions.”⁹⁸³ The application was approved on a provisional basis by the UNFCCC secretariat in 2009 in the months preceding the COP-15 in Copenhagen. Eighteen months later, the secretariat reviewed the work of the constituency on the basis of criteria highlighting the capacity of the constituency to effectively respond to its functions.⁹⁸⁴ On the basis of this review, the secretariat confirmed the constituency status of the “women and gender” constituency prior to COP17 in 2011. Currently, the women and gender caucus is actively engaging in the climate negotiations, including through coordinated advocacy work, interventions in plenary sessions of the

⁹⁸⁰ Report of the SBI on its eighth session, FCCC/SBI/1998/6, para 81.

⁹⁸¹ Promoting effective participation in the Convention process, Note by the secretariat FCCC/SBI/2004/5, para. 20.

⁹⁸² Arrangements for intergovernmental meetings, Note by the Executive Secretary, FCCC/SBI/2011/6, para. 37.

⁹⁸³ See the charter of the women and gender constituency, access at http://www.gendercc.net/fileadmin/inhalte/Dokumente/UNFCCC_conferences/Constituency/Women_Gender_Constituency_Charter_final.pdf (last accessed on 12 August 2013).

⁹⁸⁴ Communication from the secretariat to the focal points of the constituencies, on file with the authors.

main bodies established under the convention and attendance of all the negotiations meetings.

4.1.5. Recommendations related to access to information and public participation at the UNFCCC

- Building on best practices in other UN bodies,⁹⁸⁵ Finland could request the UNFCCC to establish a framework-wide **information disclosure policy** for all UNFCCC documents and information. Such a policy could be based on a presumption in favour of disclosure and would clarify strict conditions under which confidentiality should be preserved. Such a policy should include the establishment of a review mechanism – such as an appeal process – building on related experiences of other UN bodies.⁹⁸⁶
- Finland could request the UNFCCC to monitor **best practices applied in other international forums** and to either implement such practices or report to the SBI on possible action for the parties to adopt. Currently, the capacity of the secretariat is to support civil society is however limited by resources constraints. Finland could consider providing earmarked funding for such monitoring.
- In the sessions of the main bodies established under the convention, most of the restrictions preventing more effective participation by stakeholders representatives – including women representatives and indigenous peoples – result from the exercise of discretion by the officials chairing the meeting or by the parties themselves. Finland should systematically – except when particular circumstances require otherwise – **call upon chairs and others parties to enable meetings to take place in an open format and to invite input** from representatives of the public into the proceedings of the sessions, in a non-tokenistic manner.

4.1.7. Indigenous Peoples' Participation in UNFCCC

In this report, we address the participation of indigenous peoples to the UNFCCC separately from it of other stakeholders. Effective participation of indigenous representatives builds on the procedures and practices allowing the attendance, access to information and active participation of observer organizations. In this sense, any strengthening of these policies would also benefit the participation of indigenous people in

⁹⁸⁵ See for instance the International Financial Corporation's Policy on Disclosure of Information (2012) access at http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/IFC+Projects+Database/ (last accessed 2 August 2013), the Inter-American Development Bank Access to Information Policy (2010), available at <http://www.iadb.org/document.cfm?id=35167427> (last accessed 2 August 2013), UNDP's Information Disclosure Policy (1996), available at web.undp.org/idp/ (last accessed 2 August 2013).

⁹⁸⁶ The IFC information disclosure policy mandates for instance the IPC's Disclosure Policy Advisor to review complaints from stakeholders. IFC disclosure policy, para. 37. The inter-American Bank of Development Access to Information Policy established a review mechanism. IABD, section 9. UNDP established an Information Disclosure Oversight Panel to consider appeals, para. 13.

the process. However, indigenous peoples should be recognized as rights-holders rather than as stakeholders in this process. Other international processes have recognized this legitimacy particular status granting indigenous peoples with a special status, as in the case of the Arctic Council where Indigenous peoples organizations have a higher status than observer states.⁹⁸⁷ Additionally, while the UNFCCC and the Kyoto Protocol do not contain explicit references to indigenous peoples, decisions by the bodies established under these agreements have consistently emphasized the importance of indigenous knowledge, practices and rights.⁹⁸⁸

The International Forum of Indigenous Peoples on Climate Change (IFIPCC) was established in 2000 as the caucus of indigenous peoples at the UNFCCC. Its first meeting took place in parallel to the meeting of the subsidiary bodies and resulted in a declaration focusing both on the substance of the negotiations as well as on the adoption of special procedures in order to enable indigenous representatives to take active part to the global climate regime. Among its procedural proposals, the IFIPCC called the COP to acknowledge the special status of indigenous peoples in the process and to provide material support for their participation. It also requested that “the decisions on the implementation of the Kyoto Protocol include provisions that recognize and establish all the fundamental rights of Indigenous Peoples.”⁹⁸⁹ Indigenous peoples representatives have then delivered statements at every COP since the 2000 conference⁹⁹⁰ and have secured the constituency status at the COP7 in 2001.⁹⁹¹

The requests of the IFIPCC received in 2003 the endorsement of the report of the Permanent Forum on Indigenous Issues. The Permanent Forum was established in 2000 as an advisory body to the UN Economic and Social Council (ECOSOC) by a resolution of the Commission on Human Rights. At its second session, the Forum adopted a series of 13 recommendations on the “environment” thematic area, two of which addressed directly the UN climate negotiations.⁹⁹² Recommendation 2 called for the establishment of an ad hoc open-ended intersessional working group on indigenous peoples and local communities and climate change, as well as supported the call for funding being provided to support the

⁹⁸⁷ See Timo Koivurova, *Sovereign States and Self-Determining Peoples: Carving Out a Place for Transnational Indigenous Peoples in a World of Sovereign States*, in *International Community Law Review* 12 (2010), at 204.

⁹⁸⁸ Up to the January 2013, COP and CMP decisions included 33 references to indigenous peoples and the reports of the subsidiary bodies contained 56 such occurrences.

⁹⁸⁹ This emphasis on the decisions related to the Kyoto Protocol only is due to concerns resulting from ongoing negotiations related to LULUCF and to the inclusion of forest activities in the CDM. Declaration of the First International Forum of Indigenous Peoples on Climate Change, Lyon, France, September 4-6, 2000, para. 5, access at: http://www.treatycouncil.org/new_page_5211.htm (last accessed 19 April 2013).

⁹⁹⁰ See table 14.1 in Joanna Depledge, *The organization of global negotiations: Constructing the climate change regime*, Earthscan (2005).

⁹⁹¹ Promoting effective participation in the Convention process, note by the secretariat, FCCC/SBI/2004/5, para. 21.

⁹⁹² Report of the second session of the Permanent Forum on Indigenous Issues held in New York on 12–23 May 2003 (E/2003/43, E/C.19/2003/22).

participation of indigenous representatives.⁹⁹³ Recommendation 12 appealed to ECOSOC to guarantee the effective participation of indigenous peoples in international process, such as the UNFCCC.⁹⁹⁴ The secretariat of the Permanent Forum on Indigenous Issues communicated these recommendations to the secretariat of the UNFCCC.

The UNFCCC secretariat raised the issue of the response to give to these recommendations in 2004 when mandated to provide to the SBI a report of efforts to facilitate effective participation in the process and promote transparency.⁹⁹⁵ In its report, the secretariat dedicated a specific section to the issue of the participation of indigenous peoples, communicating to parties the recommendations from the Permanent Forum as well as other requests submitted by indigenous representatives to convention officials, as well as assessed their feasibility.⁹⁹⁶ In its assessment, the secretariat evaluated the additional costs that would arise from the implementation of various proposals, highlighted the fact that indigenous peoples enjoyed the same rights than other non-governmental actors. It also raised concerns about “equitable treatment by other constituencies” in case funding was provided specifically to support the participation of indigenous representatives. In response to the report, the SBI noted the existing means of participation opened for indigenous peoples on a similar basis than other non-governmental organizations and concluded that *“opportunities exist for fostering a full and effective participation by indigenous peoples organizations in the Convention process. It requested the secretariat to convey its conclusions to the Permanent Forum on Indigenous Issues”*.⁹⁹⁷

In order to promote the participation of indigenous peoples in the process, Mexico— as a host of the COP16 – hosted a workshop in September 2010 involving representatives of indigenous networks from various regions. The workshop concluded with the adoption of a consensual document highlighting three proposals for the strengthening of this participation.⁹⁹⁸ The declaration recommends the formal representation at the COP of UN bodies established to address the rights of indigenous peoples. It also recommended the creation of an “Indigenous Peoples Advisory Group” to provide input into the negotiations, and called for increased speaking rights during negotiating sessions.

The issue of the provision of specific support for the representation of indigenous peoples emerged once again in the aftermath of the challenges faced by civil society at the Copenhagen Climate summit. The report commissioned by the secretariat to Stakeholder

⁹⁹³ Ibid, para. 47.

⁹⁹⁴ Ibid. para. 61.

⁹⁹⁵ Report of the SBI on its eighteenth session, FCCC/SBI/2003/8, para, 46(c)

⁹⁹⁶ Promoting effective participation in the Convention process, Note by the secretariat FCCC/SBI/2004/5, para 39-47.

⁹⁹⁷ Report of the SBI on its twentieth session, FCCC/SBI/2004/10, para 109.

⁹⁹⁸ Resolution in support of Indigenous Peoples’ formal and effective participation in the UNFCCC process in preparation for COP 16, adopted in Xcaret, September 29, 2010, access at http://www.indigenousclimate.org/index.php?option=com_docman&task=doc_download&gid=68&Itemid=&lang=en (last accessed on 5 April 2013).

Forum for a Sustainable Future to consider opportunities to enhance the participation of observers suggested to Generate a participation fund to which organisations can apply to help support participation in UNFCCC meetings”. The report recommended that the fund be used in priority for “smaller and under-resourced constituencies” among which the indigenous peoples caucus.⁹⁹⁹ The subsequent report by the secretariat on ways to enhance the engagement of observer noted the best practice of the CBD secretariat in *“maintain[ing] a general voluntary trust fund to support the work of indigenous peoples and local communities to facilitate their participation in CBD conferences.”*¹⁰⁰⁰ The CBD voluntary trust fund was established in 2004 and has been functioning since then.¹⁰⁰¹ In 2011, a similar report by the secretariat noted that the CBD has also *“developed mechanisms to enable the participation of indigenous and local communities in formal and informal meetings, and their representation on an Advisory Committee.”*¹⁰⁰²

At the 2012 May session of the SBI, the representative from indigenous groups called for the implementation of four proposals to strengthen the representation of indigenous peoples, of which three reflect the proposals highlighted by the IIPFCC at its first meeting in 2000.¹⁰⁰³ As indigenous peoples representatives have continuously highlighted these recommendations, we recommend that Finland supports actively these proposals and champions their promotion in the negotiations.

Recommendations

- Recognizing the unique nature of indigenous peoples interest and rights, Finland could advocate for the **establishment of an Indigenous Peoples’ Expert body** in the UNFCCC framework. This body could serve both to channel technical advice from indigenous communities and to enable the UNFCCC to better take into consideration indigenous knowledge in its work. It could also act as a consultative mechanism to ensure the full participation of indigenous peoples in decision-making and enable the review of UNFCCC policies and activities from an indigenous perspective.
- Currently, the participation of Indigenous Peoples’ in the climate change regime is supported through the Observer Organizations Liaison Office of the UN climate secretariat, similarly to the participation of other constituencies. Finland could support the provision of additional support through the

⁹⁹⁹ Enhancing the substantive function performed by side activities and enhancing the Conference of the Parties as a venue for climate related exhibits/exhibitions, June 2010 – Report by Stakeholder Forum for a Sustainable Future, at 14.

¹⁰⁰⁰ Arrangements for intergovernmental meetings. Note by the Executive Secretary, FCCC/SBI/2011/6, para. 40(c)

¹⁰⁰¹ CBD Decision VII/16G, UNEP/CBD/COP/DEC/VII/16, para. 10. See also the webpage of the trust fund for more information <http://www.cbd.int/traditional/fund.shtml> (last accessed 5 April 2013).

¹⁰⁰² Arrangements for intergovernmental meetings. Note by the Executive Secretary, FCCC/SBI/2011/6, para. 46.

¹⁰⁰³ Statement on file with the author. The fourth proposals relate to the granting of observer status to UN institutions and thus relate to these bodies rather than to a decision of the parties.

establishment of a **Technical support unit for Indigenous Peoples' issues**.¹⁰⁰⁴

The secretariat should also nominate indigenous focal points in the UNFCCC Secretariat in each areas of work of the secretariat, for instance in relation to adaptation, technology transfer, capacity building and mitigation. The secretariat has already established such thematic focal points and a internal steering group in relation to women and gender.

- Finland could support the participation of indigenous people in UNFCCC regime through the establishment of a **voluntary trust fund**. Despite concerns originally raised by the secretariat about the equitable treatment of other constituencies, the absence of any form of complains following the establishment of the Women Delegates Fund highlights the unlikelihood of any such issue.¹⁰⁰⁵ The criteria for the operation of the CBD voluntary funding mechanism could provide a basis for the establishment of such a fund under the UNFCCC.¹⁰⁰⁶

4.2. Country delegates and negotiations officers

The issue of the representation of all groups of stakeholders is not only relevant in relation to the participation of non-governmental organizations in the climate process, but also concerns the diversity of countries representatives and elected negotiations officials. Already in 1994, countries committed to promote gender balance at all level of governmental positions as well as in the elections and appointments of UN officials.

(a) Commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, [...] including, inter alia, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions;

*(j) Aim at gender balance in the lists of national candidates nominated for election or appointment to United Nations bodies, specialized agencies and other autonomous organizations of the United Nations system, particularly for posts at the senior level.*¹⁰⁰⁷

In the climate change process, parties reiterated this commitment with the adoption of a decision dedicated to gender balance in 2001 in Marrakesh accords.¹⁰⁰⁸ This decision however only addressed the latter element of the Beijing Plan of Action in relation to the promotion of gender balance in the selection UN officials as countries were not ready to

¹⁰⁰⁴ United Nations Declaration on the Rights of Indigenous Peoples, article 41, requesting intergovernmental organizations to “contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance”.

¹⁰⁰⁵ The Women Delegates Fund however supports the representation of women within governmental delegations, not as members of observer organizations.

¹⁰⁰⁶ CBD Decision VIII/5 D, UNEP/CBD/COP/DEC/VIII/5, Annex.

¹⁰⁰⁷ Beijing Declaration and Platform for Action (1995), Annex II, para. 190.

¹⁰⁰⁸ Decision 23/CP.8, FCCC/CP/2002/7/Add.3.

provide guidelines related to the composition of national delegations. The decision merely invites parties to *give active consideration to the nomination of women for elective posts*.¹⁰⁰⁹ Building on the actions suggested by the Beijing Declaration for the United Nations,¹⁰¹⁰ the decision also mandates the UNFCCC secretariat to collect data on the gender balance of the memberships to various bodies established under the convention and to inform parties.¹⁰¹¹ In practice, the implementation of the decision has remained however largely inadequate. In 2012, the percentage of women participating in various UNFCCC boards and bodies was comprised between 10% (Technology Executive Committee) and 33% (Consultative Group of Experts on National Communications).¹⁰¹²

Furthermore, balanced gender participation in national governmental delegations has remained a distant objective. Between 2008-2012, only 32% of the members of national delegations were women.¹⁰¹³ While this proportion has regularly increased since 1995, the proportion of women as heads of delegations has remained noticeably constant since the adoption of the convention.¹⁰¹⁴ Between 2008 and 2012, the average proportion of women acting as head of national delegations was 19% when all negotiating sessions are considered. This number however is much lower during annual conferences. Amid expectations that the conference will constitute a major milestone in the climate process, the number of women as heads of delegations was as low as 10% at the COP-15.¹⁰¹⁵ When considered from a regional basis, this data also highlights large disparities between the proportion of women in European and American delegations (which include a higher ratio of women delegates) and their amount in Asian and African delegations (with the lowest ratios).¹⁰¹⁶

In order to partly address this lack of balance, in particular among most vulnerable countries, the Global Gender and Climate Alliance (GGCA) established in 2009 a Women Delegates Fund (WDF) to provide support to women delegates from developing countries to participate in the climate negotiations. The creation of the fund has been made possible by the financial support of the Finnish government, which provided 2.6 million euros over the past years to the GGCA for various projects including the WDF.¹⁰¹⁷ The WDF provides both the financial support for women delegates to attend the negotiations as well as targeted capacity building in negotiations-related skills.

¹⁰⁰⁹ Ibid., para. 1.

¹⁰¹⁰ Beijing Declaration and Platform for Action (1995), Annex II, para. 193.

¹⁰¹¹ Decision 23/CP.8, FCCC/CP/2002/7/Add.3, para 2 and 3

¹⁰¹² WEDO, Women's Participation in UN Climate Negotiations 2008-2012 (2013), figure 15.

¹⁰¹³ Ibid., figure 1.

¹⁰¹⁴ See the data combined by GenderCC, at <http://www.gendercc.net/policy/conferences.html> (last accessed 11 August 2013).

¹⁰¹⁵ WEDO, Women's Participation in UN Climate Negotiations 2008-2012 (2013), figure 4 and 6

¹⁰¹⁶ Ibid., figure 12.

¹⁰¹⁷ Figures available at http://www.faststartfinance.net/contributing_country/finland (last accessed on 11 August 2013).

Against this context, the issue of gender balance in the UN climate process was brought in the forefront of the negotiations with the successful negotiations and adoption of a dedicated COP decision.¹⁰¹⁸ The decision goes beyond the previous decision adopted in Marrakesh in three key elements. Firstly, it explicit establishes gender balance in UNFCCC bodies as a goal for all bodies and call for a review of the progress made to achieve this objective at the annual climate conference in 2016.¹⁰¹⁹

Secondly, the COP-18 decision established a process in order to ensure the implementation of this objective. The decision mandates the secretariat to provide regular reports of the situations prevailing in various bodies established under the convention and include the issue of “gender and climate change” as a standing agenda item on the agenda of the COPs.¹⁰²⁰ Furthermore, the decision calls for written submissions before the 2nd September 2013 by parties and observers of views on the options and ways to promote the implementation of the goal of gender balance. These submissions are to be compiled by the secretariat and should serve as a basis for the organizing of a workshop at COP-19 in November 2013 on “*gender balance in the UNFCCC process, gender-sensitive climate policy and capacity-building activities to promote the greater participation of women in the UNFCCC process*”.¹⁰²¹ The inclusion of a reference to capacity building reflects the content of the Beijing Action Plan.¹⁰²² Finally, it also invites governments to “*strive for gender balance in their delegations to sessions under the Convention and the Kyoto Protocol*”.¹⁰²³

Recommendations

The COP-18 decision provides perhaps the proverbial first step of the journey of thousands miles towards gender balance and gender-sensitive policies in the climate regime. As a country having shown leadership in the past years to promote this agenda, Finland is particularly well place to build on the momentum provided by the gender decision adopted in 2012 and to ensure the rapid improvements towards the goal of ensuring gender balance in the climate change regime.

- The gender decision adopted at the COP-18 represent a major progress compared to the weak language of the previous gender decision, however it falls short of providing for **affirmative measures in relation both to country delegates and negotiation officials and membership to bodies established under the convention** in order to ensure that the commitments included in the decision do not remain inspirational for parties. Finland, with its strong and convincing experience in affirmative action at the domestic level – including in relation to the establishment of quotas in decision-making, is well positioned to

¹⁰¹⁸ Decision 23/CP.8, FCCC/CP/2002/7/Add.3.

¹⁰¹⁹ Ibid. Para. 2 and 4.

¹⁰²⁰ Ibid, 8 and 9.

¹⁰²¹ Ibid, para 10-12.

¹⁰²² Beijing Declaration and Platform for Action (1995), Annex II, para. 195.

¹⁰²³ Ibid, para. 7.

advocate for the establishment of such affirmative measures at the UNFCCC.¹⁰²⁴ Considering the prejudices associated to the establishment of such measures, Finland could both advocate proactively for the considering of such measures under the framework established by decision 23/CP.18 as well as commission research to address potential questions that could potentially arise in relation to such measures.¹⁰²⁵

- In relation to supporting directly the participation of women delegates from Least Developed Countries, Finland has already played a pioneer role in providing funds to the **Women Delegates Fund**. Recently, Iceland joined this effort as the second donator to this endeavour. Beyond its own role, Finland could actively share its experience with other potential donors in order to scale up the fund and increase its impact.

4.3. Mitigation

The following sub-section will address two different aspects of the relation between human rights, in particular in relation to vulnerable and/or marginalized groups, and mitigation policies. In the first sub-section, we will consider the relevance of a human rights framework in relation to the objective of the convention. The second sub-section will address procedural rights and redress mechanisms in relation to the Clean Development Mechanism.

4.3.1. Goal setting and ambition

In relation to the final objective of the climate change regime, the provisions of the 1992 convention do not identify a quantified target but define the objective of the convention and any related legal instrument as the *“stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”*.¹⁰²⁶ To define further the subjective concept of dangerousness, the convention indicates that three criteria should be taken into consideration: the capacity of

¹⁰²⁴ Act on Equality between Women and Men 1986/609, section 4, 5, 6 and most particularly E (a) requiring that municipal and state committee type bodies have a quota of minimum 40 percent of women and men. See Kevät Nousiainen’s country report for Finland in Goran Selanec and Linda Senden (2011) “Positive Action Measures to Ensure Full Equality in Practice between Men and Women, including on Company Boards”, European Commission; and also more specifically on the questions of the establishment of quotas “The Struggle for Quotas in Finland – From Women’s Mobilisation to the Politicisation of Gender?” Athena Project 3 B. Rosa – The Documentation Centre and Archives on Feminism, Equal Opportunities and Women’s Studies. Access at: <http://www.rosadoc.be/site/rosa/english/european%20projects/athena/paperspower.htm> (last accessed on 9 August 2013).

¹⁰²⁵ See for instance the compilation of best practices at various level in UN Women and Mary Robinson Foundation for Climate Justice, “the full view - Advancing the goal of gender balance in multilateral and intergovernmental processes” (2013), 7-17, access at: <http://www.mrfcj.org/pdf/2013-06-13-The-Full-View.pdf> (last accessed on 10 August 2013).

¹⁰²⁶ UNFCCC, art. 2

ecosystems to adapt naturally, the guarantee that food production is not threatened, and the continuation of sustainable development.

Until recently, no serious attempt was made in the negotiations to define a concrete threshold equivalent to “dangerous” anthropogenic interference. Instead parties focused on the more concrete commitments provided under article 4 of the convention. It is beyond the scope of this report to assess the added value and limits of the identification of such a quantified target, however the pros and cons of such an approach have been widely emphasized in the literature.¹⁰²⁷ In order to inform any debate on the interpretation of article 2, the IPCC assessed in its third report the relationships between temperatures increase and the vulnerabilities of ecological and socioeconomic system identified as “reasons for concerns”.¹⁰²⁸ While highlighting that translating the objective provided in article 2 of the convention into a quantified objective “involves value judgements”, the IPCC highlighted some criteria to guide this interpretation, among which the issue of the distribution of impacts and vulnerability.¹⁰²⁹ The IPCC noted an “increasing evidence of greater vulnerability of specific groups such as the poor and elderly not only in developing but also in developed countries”.¹⁰³⁰

At the COP-15, the objective defined in article 2 was quantified for the first time as the objective of limiting the increase of temperatures to 2 degrees Celsius.¹⁰³¹ Considering that the COP-15 failed to formally adopt the Accord, the goal was only endorsed formally in the Cancun Agreements.¹⁰³² In order to accommodate the view shared by small islands states and others that this target was inadequate, the Cancun Agreements also foresaw a periodic review of the adequacy of this global goal – in particular in relation to an alternative goal setting at 1.5 degrees Celsius maximum increase of temperatures tolerated - at the light of observed impacts and the latest scientific information.¹⁰³³ COP-17

¹⁰²⁷ For a list of benefits associated to the establishment of a quantified target, as well as for a consideration of technical and political obstacles to such an adoption, see Jonathan Pershing, “A Long-Term Target: Framing the Climate Effort”, in Pew Center on Global Climate Change, *Beyond Kyoto: Advancing the international effort against climate change* (2003), at 14 and 28-30.

¹⁰²⁸ Figure TS-12, McCarthy, et al. (eds.), “Climate Change 2001: Impacts, Adaptation, and Vulnerability, Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change”, Cambridge University Press, (2001).

¹⁰²⁹ IPCC Assessment Report 4, Synthesis Report, Pachauri, R.K. and Reisinger, A. (Eds.) IPCC (2007), Box ‘Key Vulnerabilities and Article 2 of the UNFCCC’, Topic 5.

¹⁰³⁰ Ibid., at 65, see also Michael Oppenheimer & Annie Petsonk, “Article 2 of the UNFCCC: Historical Origins, Recent Interpretations”, *Climatic Change* 73 (2005), 195-226.

¹⁰³¹ Decision 2/CP.15, FCCC/CP/2009/11/Add.1, para. 2. The degrees target was first endorsed by the EU in 1996. See Proceedings of the 1939th Council Meeting–Environment, Brussels June 25–26, 1996. Prior to the Copenhagen conference, this target was brought at the forefront of the negotiations by its consecutive endorsement by the G8 (“Responsible leadership for a sustainable future”, Declaration by the G-8, L’Aquila 2009, p. 19) and by the “Major Economies Forum” (First leaders meeting of the Major Economies Forum on Energy and Climate, 2009, access at: <http://www.majoreconomiesforum.org/past-meetings/the-first-leaders-meeting.html> - last accessed: 15 August 2013).

¹⁰³² Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 4.

¹⁰³³ Ibid. para 139.

and COP-18 further defined the terms of the review, listing sources of information to be considered and establishing the process for the first review.¹⁰³⁴ Due to the absence of consensus over the agenda of the SBI 38, formal negotiations on the review could not start in June 2013 as scheduled. The Structured Expert Dialogue opened however at the SBI 38.

During its first session, scientist highlighted that the adequacy of the 2 degrees target was not a scientific question but rather a normative one. As noted by Schneider and Lane in 2006, this reflected the “*common view of most natural and social scientists that it is not the direct role of the scientific community to define what ‘dangerous’ means. Rather, it is ultimately a political question because it depends on value judgments*”.¹⁰³⁵

In this context and as articulated by Caney, human rights could offer valuable normative threshold to interpret the notion of dangerousness contained in the convention.¹⁰³⁶ The endorsement of such a framework would provide a particularly useful approach in order to consider the implications of the global goal for the rights of the most vulnerable. Humphreys emphasized the need to “factoring future human rights threats explicitly into climate change scenarios” in order to provide a tool for both refocusing climate impacts but also “future dutybearers and the adequacy of response institutions and redress mechanisms”.¹⁰³⁷ Such a human rights based approach would contrast greatly with cost-benefit approaches to goal-setting which aggregate climate impacts and balance adverse effects with potential benefits. Finally, it would also enable to link more effectively normative issues related to the interplay between mitigation, adaptation and loss and damage.¹⁰³⁸

Recommendation

- In the short-term, Finland could call on the SBI to identify the gap of knowledge and to request additional studies regarding the **implication of the two degrees target in relation to parties’ commitments to various international human rights norms and other principles of international law**.¹⁰³⁹ It should be noted however that such a request should be framed in order to avoid any actor from using it to slow the pace of the review.

¹⁰³⁴ Durban, 2/CP.17, FCCC/CP/2011/9/Add.1, para 157-167, Doha, 1/CP.18, FCCC/CP/2012/8/Add.1, para. 79-91.

¹⁰³⁵ Schneider, S. H., Lane, J. “An overview of „dangerous“ climate change”. In Schellnhuber, H.J., Cramer, W., Nakicenovic, N. (eds) *Avoiding Dangerous Climate Change*, Cambridge University Press (2006), at 14. Emphasis in the original.

¹⁰³⁶ Simon Caney, “Climate Change, Human Rights, and Moral Thresholds” in Stephen M. Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (eds.), *Climate Ethics: Essential Readings*, Oxford University Press (2010), 163-179.

¹⁰³⁷ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide* (2008), 18 ff.

¹⁰³⁸ Timo Koivurova, Sébastien Duyck and Leena Heinamäki, “Human Rights and Climate Change”, in Erkki J. Hollo, Kati Kulovesi, Michael Mehling (eds.), *Climate Change and the Law* (2012), at 324.

¹⁰³⁹ The COP mandated the SBs to identify such gaps in knowledge and to “make requests for additional inputs and studies that would be useful for conducting the review”. Doha, Decision 1/CP.18, FCCC/CP/2012/8/Add.1, para. 84.

- In the long-run, Finland could advocate for the **use of human rights as thresholds** in the review of the global goal in order to ensure that a cost-benefit analysis of climate impacts do not trump the adverse effects on vulnerable populations.

4.3.2. The Clean Development Mechanism

The Clean Development Mechanism was established by the Kyoto Protocol in order to promote sustainable development in developing countries while allowing more flexibility for developed countries to meet their quantified emissions reductions targets.¹⁰⁴⁰ Once described as the “Kyoto surprise”, the CDM has emerged as one of the most prominent figure of the UN climate regime, with over 7000 projects registered as of August 1st, 2013.¹⁰⁴¹

This section only focuses on the review of the CDM and not on new market mechanisms. However, considering that the CDM provides a source of learning for the establishment and design of other market-based mechanisms, the improvement of the mechanism will allow for the emergence of best practices that could be replicated in relation to new market-based mechanisms. Furthermore, a review of the modalities and procedures for the CDM is currently ongoing and is expected to deliver its results at the COP-19 in Warsaw. Indeed, the COP decision adopting these modalities and procedures provided that their first review shall be carried out no later than one year after the end of the first commitment period.¹⁰⁴² The modalities of this review were further defined at the CMP.8 in Doha and include a call for submissions,¹⁰⁴³ a proposal by the Executive Board, and a workshop at the June session of the SBI.¹⁰⁴⁴ The review is expected to be completed with the drafting of recommendations by the SBI at its thirty ninth session in November 2013. This review provides a unique opportunity for Finland to contribute to addressing ongoing issues with the functioning of the CDM.

Ongoing issues

Over the past years, two controversial CDM projects have highlighted the need for Human Rights safeguards in all mitigation policies supported by the UNFCCC framework.

¹⁰⁴⁰ Kyoto Protocol, article 12.

¹⁰⁴¹ Data by UNEP Risø Centre, access <http://www.cdmpipeline.org/> (last accessed on 16 August 2013).

¹⁰⁴² Decision 3/CMP.1, FCCC/KP/CMP/2005/8/Add.1, para. 4.

¹⁰⁴³ Several contributions submitted by non-governmental organizations directly address the issues covered by the present report, including the submissions on behalf of Asociación Interamericana para la Defensa del Ambiente (AIDA), Center for International Environmental Law (CIEL), Earthjustice, International Rivers Network, as well as on behalf of Climate Action Network International. The submissions can be downloaded at http://unfccc.int/documentation/submissions_from_observers/items/7481.php (last accessed on 6 August 2013). Submissions by parties can be accessed in the compilation document provided by the secretariat. <http://unfccc.int/resource/docs/2013/sbi/eng/misc01.pdf> (last accessed on 6 August 2013).

¹⁰⁴⁴ Decision 5/CMP.8, FCCC/KP/CMP/2012/13/Add.2, para. 9-17.

In July 2011, the Executive Board (EB) of the Clean Development Mechanism (CDM) registered the Aguan biogas project¹⁰⁴⁵. The project produces fuel from the output of local palm oil plantations in the region of Bajo Aguan (Northern Honduras). The region is the location of a longstanding land claim. Within the context of a general insecurity in the country since 2009, the situation resulted in a conflict between peasants claiming their land rights and private security firms protecting the interest of large palm oil plantations. Watchdogs organizations have reported at least 88 murders— primarily peasants, but also journalists – associated to this dispute,¹⁰⁴⁶ while the Inter-American Commission of Human Rights noted in its 2011 annual report that from September 2009 and August 2012, fifty-three individuals affiliated with different *campesino* organizations, one journalist and his partner, had been murdered in the context of the dispute.¹⁰⁴⁷ During its field visit in May 2010, the Inter-American Commission on Human Rights expressed “its concern over the involvement of the armed forces in matters related to citizen security; as such matters should be the exclusive purview of the civilian law enforcement.”¹⁰⁴⁸ On 24 October 2011, the Inter-American Commission on Human Rights held a hearing on the situation in Bajo Aguan, during which petitioners described the situation as “the most severe repression and aggression against peasant communities in a sub-region in Central America in the past 15 years.”¹⁰⁴⁹ The Inter-American Commission on Human Rights concluded in its 2011 annual report.

The Executive Board reached the decision to approve the project despite the involved firms’ direct link to cases of alleged murders, torture and disappearance and the petition of dozens of civil society organizations to the Board highlighting this connection. Hence, the project’s approval as a CDM project will allow economic actors implicated in some of these human rights violations to obtain certified emissions reductions (CERs) and thus provide an economic incentive for the continuation of the dispute. This registration led many non-governmental and institutional stakeholders – such as the European

¹⁰⁴⁵ Project number 3197: Aguan biogas recovery from Palm Oil Mill Effluent (POME) ponds and biogas utilisation - Exportadora del Atlántico, Aguan/Honduras – see the page of the project on UNFCCC CDM webpage: <http://cdm.unfccc.int/Projects/DB/TUEV-SUED1260202521.42/view> (last accessed on 6 August 2013).

¹⁰⁴⁶ See for instance the report by Rights Action, Human Rights Violations Attributed to Military Forces in the Bajo Aguan Valley in Honduras, February 2013, access at http://rightsaction.org/sites/default/files/Rpt_130220_Aguan_Final.pdf (last accessed on 6 August 2013).

¹⁰⁴⁷ IACHR Press Release, IACHR Condemns Murder of Human Rights Defenders in Honduras, September 28, 2012, available at, http://www.oas.org/en/iachr/media_center/PReleases/2012/121.asp (last accessed on 7 August 2013). For an analysis of the Bajo Aguan situation, see also Annual report of the Inter-American Commission on Human Rights 2011, Chapter IV – Honduras, para. 295-307.

¹⁰⁴⁸ Preliminary Observations of the Inter-American Commission on Human Rights on its visit to Honduras, OEA/Ser.L/V/II., Doc. 68, 18 May 2010, para. 120.

¹⁰⁴⁹ See report, Claire Grandison, “Human Rights Situation in the Bajo Aguan, Honduras”, 28 October 2011, access at: <http://hrbrief.org/2011/10/human-rights-situation-in-the-bajo-aguanhonduras/> (last accessed on 7 August 2013).

parliament¹⁰⁵⁰ – to call for a reform of the CDM in order to ensure that the respect of human rights becomes a basic requirement for all projects.

Another decision by the Executive Board to register a project has raised concerns about the lack of accountability of this process for the respect of human rights. In January 2011, the Board registered the Barro Blanco hydroelectric dam project.¹⁰⁵¹ The project will dam the Tabasará River and flood the habitat of several Indigenous Ngäbe and *campesino* communities, as well as threaten their means of subsistence. During the consultations processes¹⁰⁵² organized ahead of the registration of the project, the CDM validator Asociación Española de Normalización y Certificación” (AENOR) failed to consult appropriately with all affected communities. Local organizations highlighted these shortcomings with data highlighting the impacts for the communities concerned, but the validator ignored the comments and no reference to this issue was included in the final validation report. In a letter to the Board, civil society organizations highlighted serious concerns that the process violated the international norms such as principle of ‘Free prior and informed consent’ (FPIC).¹⁰⁵³ Upon the request by a consortium of non-governmental organization to investigate the case during his visit to Panama in July 2013,¹⁰⁵⁴ UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya organized a hearing with the peoples affected by the construction of the dam and concluded:

*From my visit to the Comarca Ngäbe-Buglé and my dialogues with Ngäbe representatives is clear that there is still strong opposition to the project Barro Blanco and a lack of clear and adequate information on its impacts. [authors’ translation]*¹⁰⁵⁵

These two cases highlight that the processes currently established under the convention do not provide the satisfactorily remedies and safeguards in order to ensure that all projects registered under the mechanisms established under the convention respect human rights. Several approaches should thus be implemented in order to prevent such occurrence and to remedy to the current situation. Firstly, the effective enjoyment of stakeholders’ procedural rights should be guaranteed not only in the design of the climate

¹⁰⁵⁰ See for instance the European Parliament resolution of 16 November 2011 on the climate change conference in Durban (COP 17), P7_TA-PROV(2011)0504, para. 28.

¹⁰⁵¹ Project 3237 : Barro Blanco Hydroelectric Power Plant Project – see <http://cdm.unfccc.int/Projects/DB/AENOR1261468057.59/view> (last accessed on 7 August 2013).

¹⁰⁵² The project was designed in two stages, first in a smaller version and latter with more ambitious plans. Both of the consultations processes associated to these versions of the Barro Blanco Hydroelectric project failed to consult with most affected communities.

¹⁰⁵³ Letter of Wednesday, February 9, 2011, to the CDM Executive Board, access at <http://www.internationalrivers.org/resources/letter-to-the-cdm-executive-board-regarding-the-barro-blanco-hydroelectric-project-3078> (last accessed on 9 August 2013).

¹⁰⁵⁴ The letter is available at http://ciel.org/Publications/BarroBlanco_Anaya_14Jun2013.pdf (last accessed on 8 August 2013).

¹⁰⁵⁵ Statement of the Special Rapporteur on the rights of indigenous peoples at the end of his official visit to Panama, 26 July 2013, available at <http://unsr.jamesanaya.org/statements/declaracion-del-relator-especial-sobre-los-derechos-de-los-pueblos-indigenas-al-concluir-su-visita-oficial-a-panama> (last accessed on 16 August 2013).

change regime but throughout its implementation.¹⁰⁵⁶ Secondly, all bodies established under the convention should guarantee the respect of international norms such as contained in human rights instruments. Finally, an effective grievance mechanism should be established in order to provide a remedy for affected stakeholders whose rights have been negatively affected by a decision.

Procedural rights in the CDM

This subsection only addresses the issue of the exercise of procedural rights in the project cycle established under the CDM, the discussion of the implementation of these rights in relation to the governance of the CDM has voluntarily been omitted for the sack of brevity. The effective exercise of procedural rights of stakeholders is particularly important in the context of the CDM due to the complexity of its governance structure and to the delegation of administrative authorities to several actors. Firstly, the parties delegate through the COP management authority to the Executive Board of the CDM, an intergovernmental body especially created. The CDM Executive Board then delegates some of its regulatory functions, including the tasks of validation and verification of CDM projects, to private certifiers known as Designated Operating Entities (DOEs). In international governance, scholars have emphasized that the distance between elected national representatives and agents, to which regulatory authority is delegated, affects the governance models legitimacy.¹⁰⁵⁷ The administrative role played by the CDM Executive Board and the DOEs raise specific questions as their decisions are not subject to judicial review.¹⁰⁵⁸ In this context, the guarantee of stakeholders' adequate enjoyment of their procedural rights is particularly important to the legitimacy of the governance of the CDM.

The Modalities and Procedures of the CDM guarantee public access to information both in relation to the internal governance, functioning, and expertise of the DOEs¹⁰⁵⁹ as well as to an updated list of the status of all DOE and to the projects that it is in charged of.¹⁰⁶⁰ Furthermore, DOEs are generally required to make publicly available all information provided by the project participants, except information marked as confidential.¹⁰⁶¹ In relation to a validation phase, the DOE is responsible to make both the project design documents and its validation report available to the public.¹⁰⁶²

¹⁰⁵⁶ See Svitlana Kravchenko, "Procedural Rights as a Crucial Tool to Combat Climate Change", 38 *Georgia Journal of International and Comparative Law* (2010), 635.

¹⁰⁵⁷ Daniel Esty, "Good Governance at the Supranational Scale: Globalizing Administrative Law", 115 *Yale Law Journal* (2006), 1502.

¹⁰⁵⁸ See on this issue Asher Alkoby, "Non-State Actors and the Legitimacy of International Environmental Law", 3 *Non-State Actors and International Law* (2003), at 25.

¹⁰⁵⁹ Decision 3/CMP.1, Modalities and Procedures for a Clean Development Mechanism as defined in Article 12 of the Kyoto Protocol, Annex, FCCC/KP/CMP/2005/8/Add.1, 30 March 2006, para. 1(g).

¹⁰⁶⁰ Ibid., para. 27 (f).

¹⁰⁶¹ Ibid., para. 27 (h).

¹⁰⁶² Ibid., para. 40. This requirement is however more limited at the verification phase as DOEs are only required to make publicly available its verification report. Ibid., para. 62 (h).

Stakeholders' consultations, in relation to specific projects, are organized via two different processes of different geographic scopes. Project participants are required to conduct local consultations during the design of the project. The report of this consultation should be included in the information transmitted by the project participants to the DOEs during the validation of the project.¹⁰⁶³ The registration documents should include the project participant's description of the steps taken in inviting public comments, as a summary of the comments, and a report on how the received comments have been evaluated.

At the global level, stakeholders and UNFCCC-accredited organizations are invited to provide comments through the "global stakeholders consultations" managed by the DOE itself. Global stakeholders consultations are initiated by the DOE's publication of the project design document's non-confidential elements, after which stakeholders are invited to submit comments.¹⁰⁶⁴ The DOE validation report must provide information on how each comment has been duly addressed throughout the process.¹⁰⁶⁵ This process is however closed once the project has been registered and there is afterwards no formal and automatic opportunity for stakeholders to provide comments to guide the verification by the DOE of the emissions reduction resulting from a project. At this stage, stakeholders can only then attempt to persuade parties to the project or members of the CDM Executive Board to trigger the review of the request for issuance of Certified Emissions Reductions. This review can only address cases of fraud, malfeasance, and the incompetence of the DOE.¹⁰⁶⁶

Review of the respect of international norms

To justify the registration of the two contentious projects mentioned in this section, the members of the CDM Executive Board argued that the board had considered the information received but could not identify any violation of the processes that the board is competent to review. They explained that their function is constrained by the mandate provided by the parties through the decisions of the CMP.¹⁰⁶⁷ In the present case, the Executive Board argued, both projects respected all requirements defined by the modalities and procedures of the CDM at the time of the submission of the registration documents – the respect of international human rights norm not being included in these requirements. Furthermore, the Executive Board lacks the capacity to review or withdraw certification and to suspend the transfer of credits if such circumstances are brought to its knowledge. Currently, the only explicit entry point in the CDM Modalities and Procedures for the consideration of the respect of human rights obligations can be found in relation to the

¹⁰⁶³ Ibid., para. 37 (b).

¹⁰⁶⁴ Ibid., para. 40 (c).

¹⁰⁶⁵ See Procedures for processing and reporting on validation of Clean Development Mechanism project activities (Version 03), CDM-EB-50, Annex 48, para. 12.

¹⁰⁶⁶ Ibid., para. 65.

¹⁰⁶⁷ Decision 3/CMP.1, Annex, FCCC/KP/CMP/2005/8/Add.1.

need for the project to contribute to sustainable development. However, the review of this requirement is left to the discretion of the designated national authority of the host country.¹⁰⁶⁸

Provision of a review mechanism

Access to a remedy in environmental decision-making provides a guarantee in the case of a infringement of the rights of access to information and of participation in decision-making. The current Modalities and Procedures however lack any mechanism that could provide stakeholders with an effective remedy.

Currently, the only review mechanisms established in the CDM target the review of decisions by the DOEs. The Modalities and Procedures require DOEs to establish internal review procedures and to make “their procedures for handling complaints, appeals and disputes” publicly available.¹⁰⁶⁹ Additionally, the CDM Executive Board also established an external process for handling complaints against the DOEs, to which any stakeholder who has participated at a global consultation may appeal.¹⁰⁷⁰ In such a case, the Executive Board would organize a contradictory procedure, which could eventually lead to the suspension of the DOE. The scope of these two procedures remain however limited.

The lack of a proper review process was already identified by academics as a potential issue before even the adoption of the Marrakech Accords.¹⁰⁷¹ At the COP15, the COP/MOP requested that the CDM Executive Board proposes, in consultation with stakeholders, procedures for appeals against CDM Executive Board decisions “that are brought by stakeholders directly involved, defined in a conservative manner.”¹⁰⁷² The CDM Executive Board then developed a proposal for the establishment of an appeal procedure of its decisions. This proposal however interpreted the reference to “stakeholders directly involved, defined in a conservative manner” as only encompassing the economic entities involved in a project, thus preventing affected stakeholders from appealing.¹⁰⁷³ A technical paper, issued by the secretariat to guide the discussions, noted that the decision over the scope of the legal standing would have implications “for issues such as environmental integrity, legitimacy and confidence as well as for caseload, the

¹⁰⁶⁸ Ibid., para. 40.

¹⁰⁶⁹ Ibid., Appendix A, para. 1(g)vi. The standards for the accreditation of DOEs also contains a second reference to such processes, requesting from applicant entities to communicate their procedures to allocate responsibility in relation to the handling of complaints, Ibid., para. 1(e). The CDM accreditation standards for DOEs further develop on the content of these requirements, elaborating on each of these three types of contention processes. Clean Development Mechanism Accreditation Standard for Operational Entities (Version 02), CDM-EB-56, 17 September 2010, Annex 1, para. 133.

¹⁰⁷⁰ Ibid., Procedure for accrediting Operational Entities by the Executive Board of the Clean Development Mechanism, (Version 10.1), Annex 2, Appendix 3.

¹⁰⁷¹ Peggy R. Kalas and Alexia Herwig, “Dispute Resolution under the Kyoto Protocol”, 27 *Ecology Law Quarterly* (2000), at 121.

¹⁰⁷² Decision 2/CMP.5, FCCC/KP/CMP/2009/21/Add.1, para. 42.

¹⁰⁷³ 2010 Annual Report of the EB to the CMP, FCCC/KP/CMP/2010/10, 3 November 2010, Annex II.

efficiency of the appeal mechanism and the possibility of vexatious or frivolous claims.”¹⁰⁷⁴ It also referred to the role that stakeholders could play in the process, suggesting that the appeal mechanism may have the possibility to solicit, at its own discretion, views from stakeholders previously engaged in the project cycle.¹⁰⁷⁵ Since parties could not agree on the terms of this appeal, a decision on the scope of the appeal offered to the CDM Executive Board decision remains pending and is expected to be adopted at CMP-9 in November 2013.¹⁰⁷⁶ In the current draft decision, the language providing that the any “stakeholder or organization [...] which has submitted comments with regard to] a CDM project activity or a proposed CDM project activity” remains bracketed.¹⁰⁷⁷

Recommendations

The ongoing review of the modalities and procedures of the CDM provide an opportunity to strengthen the participation of stakeholders to the CDM project cycle and to address several issues that past projects have highlighted.

- Some past issues have resulted from the lack of concrete guidelines on the conduct of local stakeholders consultations. A set of rules should be provided in order to guarantee a **minimum threshold in the quality of the local stakeholder consultation process**. Such guidelines could for instance further define the geographic scope of the consultations, the required communication efforts expected from the project participants – including the provision of non-technical language and translations in relevant languages – and the timeline of the consultations.
- The review also presents an opportunity to **clarify the process for the validation of the local stakeholders consultations**. Further guidelines could be provided to define how project participants should respond and address each of the comments provided during the consultations. It could also provide further clear guidance to the DOEs on how to validate the stakeholders consultations.¹⁰⁷⁸
- The review of the Modalities and Procedures should explicitly mandate the Executive Board to uphold its responsibility to ensure that the **projects registered do not infringe international norms** such as the UN Charter and international human rights norms – including the Universal Declaration of Human Rights, the UN Declaration on the Rights of Indigenous Peoples and the

¹⁰⁷⁴ UNFCCC, Technical Paper: Procedures, Mechanisms and Institutional Arrangements for Appeals against the Decisions of the Executive Board of the Clean Development Mechanism, UN Doc. FCCC/TP/2011/3, para. 131.

¹⁰⁷⁵ Ibid, para. 132.

¹⁰⁷⁶ Report of the SBI on its thirty-seventh session, 2012, FCCC/SBI/2012/33, para. 144.

¹⁰⁷⁷ Ibid., para. 38.

¹⁰⁷⁸ In its recommendations on the review of the CDM Modalities and Procedures, the Executive Board recommended that a provision be included in the Modalities and Procedures to require DOEs to validate the stakeholders consultations process., FCCC/SBI/2013/INF.1, para. 31.

Convention to Eliminate All Forms of Discrimination Against Women.¹⁰⁷⁹ Such a review would equip the Board with the possibility to implement the recognition in the Cancun agreements that “Parties should, in all climate change-related actions, fully respect human rights.”¹⁰⁸⁰

- The review should also provide the possibility for the Board and Parties to monitor the respect of international norms and adequate action even **once a project as been adopted**. The Executive Board should be authorized to suspend the registration of any project that does not meet human rights obligations. The establishment of a special channel for communication between stakeholders and the board would enable the Board to receive relevant communications and to make informed decisions. Additionally, both host and investor countries should be allowed to withdraw or suspend their Letters Of Approvals in the case of projects violating human rights subject to additional procedural guidelines.¹⁰⁸¹
- Parties need to address the absence of **redress mechanism for stakeholders** whose rights are adversely impacted a CDM project. The ongoing negotiations for the establishment of an appeal process to decisions of the board by stakeholders directly involved already provide a mandate for the establishment of such a mechanism. Finland should ensure that this mandate is implemented in order to the current infringement of the right of access to justice in relation to CDM projects.

4.4. Adaptation

The text of the Framework Convention contains several references to the adaptation to climate impacts. It expresses the commitment of all parties to adopt domestic measures and to cooperate in order to facilitate adequate adaptation.¹⁰⁸² In addition, it also emphasizes the duty of developed states to “*assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects*”.¹⁰⁸³

However, adaptation was not considered substantial in the negotiations up to the release of the third IPCC Assessment Report in 2001, which provided further information on ongoing and short-term climate impacts and thus emphasized the importance of

¹⁰⁷⁹ In its written submission on the review of the modalities and procedures of the CDM, the European Union recalled that the “UNFCCC and its Kyoto Protocol are part of the UN system, the implementation of project activities under the CDM shall respect international human rights”. Submission by Switzerland, Paper no. 5, FCCC/SBI/2013/MISC.1, at 15.

¹⁰⁸⁰ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 8. For an insider account of the negotiations of such right-based language in the climate change process, see for instance Svitlana Kravchenko, “Procedural Rights as a Crucial Tool to Combat Climate Change”, 38 *Georgia Journal of International and Comparative Law* (2010), 635.

¹⁰⁸¹ This proposal has been actually already suggested by the EU. See Submission by Ireland and the European Commission on behalf of the EU and its Member States Paper no. 2, FCCC/SBI/2013/MISC.1, para. 11.

¹⁰⁸² UNFCCC, Article 4.1.b and e.

¹⁰⁸³ UNFCCC, Article 4.4, with article 4.8 and 4.9 providing guidance on how to assess the notion of most vulnerable countries.

adaptation.¹⁰⁸⁴ IPCC AR-3 highlighted ongoing impacts and New Delhi ministerial declaration raise political support for adaptation.¹⁰⁸⁵ In 2002, the Delhi Ministerial Declaration on Climate Change and Sustainable Development provided additional momentum in emphasizing that “adaptation to the adverse effects of climate change is of high priority for all countries”.¹⁰⁸⁶

4.4.1. Nairobi work programme

Subsequently, the COP requested in 2003 the SBSTA to initiate its work on the issue of scientific, technical and socio-economic aspects of impacts of, and vulnerability and adaptation to, climate change.¹⁰⁸⁷ During the following conference, the COP requested SBSTA to develop a “structured five-year programme of work on the scientific, technical and socio-economic aspects of impacts, vulnerability and adaptation to climate change, which would address the following issues: [...] vulnerability assessments; adaptation planning, measures and actions; and integration into sustainable development”.¹⁰⁸⁸ The work programme drafted by SBTA was then adopted at the COP 11.¹⁰⁸⁹ The meeting of the SBSTA during the COP12 defined the activities to be undertaken under the work program, renamed Nairobi Work Program (NWP).

The work programme comprises two thematic areas (1) impacts vulnerability and (2) adaptation to climate change. Its purpose is to foster cooperation among parties in order help governments and the bodies of the convention to improve their understanding and assessment of the impacts of climate change and to make informed decisions on practical adaptation actions and measures.

The original terms of references and program of work of the NWP included references neither to gender sensitivity of the program nor to the participation of women. It however contained the following sub-theme in relation to its first thematic area: “promoting the availability of information on the socio-economic aspects of climate change and improving the integration of socio-economic information into impact and vulnerability assessments”.¹⁰⁹⁰ In relation to indigenous peoples, the terms of references of the NWP did note under the second thematic area the importance to “collect, analyse and disseminate [...] local and indigenous knowledge” in relation to adaptation planning, measures and actions¹⁰⁹¹ and to “take into account local and indigenous knowledge and experience” in relation to adaptation technologies.¹⁰⁹²

¹⁰⁸⁴ IPCC Third Assessment Report (2001).

¹⁰⁸⁵ Decision 1/CP.8, FCCC/CP/2002/7/Add.1.

¹⁰⁸⁶ Ibid., para (e).

¹⁰⁸⁷ Decision 10/CP.9, FCCC/CP/2003/6/Add.1, para. 1.

¹⁰⁸⁸ Decision 1/CP.10, FCCC/CP/2004/10/Add.1, para. 23.

¹⁰⁸⁹ Ibid., para 6(e), annex.

¹⁰⁹⁰ Ibid., para.3(a)v.

¹⁰⁹¹ Ibid., para.3(b)ii.

¹⁰⁹² Report of the SBSTA at its twenty fifth session, FCCC/SBSTA/2006/11, para. 67.

The Cancun Agreements however affirmed explicitly that “*enhanced action on adaptation [...] should follow a country-driven, gender-sensitive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional and indigenous knowledge*”.¹⁰⁹³ On the basis of this guidance from the COP, SBSTA considered in 2011 potential activities under the NWP and suggested “Enhancing the use of indigenous and traditional knowledge and practices for adaptation and the application of gender-sensitive approaches and tools for understanding and assessing impacts, vulnerability and adaptation to climate change”.¹⁰⁹⁴ This proposal was noted in Durban by the COP which suggested to include indigenous knowledge and practices, and gender-sensitive tools and approaches as cross-cutting issues for the subsequent activities organized under the NWP.

It also mandated the SBSTA to review the areas of work of the NWP and make a recommendation to the COP-19 on enhancing the objectives of the NWP in the context of the Cancun Framework for Adaptation.¹⁰⁹⁵ During the 2012 consultation on new areas for the work program, several parties and international organizations emphasized the need for the NWP to consider the climate impacts on women and the role of women in adaptation (Costa Rica, EU, LDC, as well as the secretariats of the CBD and of the UNCCD) as well as on the consideration of indigenous knowledge and on the participation of indigenous peoples (Costa Rica, Nepal, LDCs, as well as the secretariat of the CBD).¹⁰⁹⁶

In June 2013, SBSTA requested the secretariat to prepare a technical paper before the COP-19 on “*best practices and available tools for the use of indigenous and traditional knowledge and practices for adaptation, and the application of gender-sensitive approaches and tools for understanding and assessing impacts, vulnerability and adaptation to climate change*”.¹⁰⁹⁷ It also mandated the secretariat to organize a technical expert meeting before June 2014 on the same topic. Finally, SBSTA drafted a COP decision for adoption in November 2013 and providing a renewed mandate for the NWP building on the language related to gender-sensitivity and indigenous knowledge and practices included in the Cancun Agreements.¹⁰⁹⁸

Recommendations

- Finland could advocate for the support to the **participation of women and indigenous representatives** in the Nairobi Work Program, calling for a specific mandate to the secretariat to provide additional outreach to such

¹⁰⁹³ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 12.

¹⁰⁹⁴ Nairobi work programme on impacts, vulnerability and adaptation to climate change, Report of the SBSTA at its thirty fourth session, FCCC/SBSTA/2011/2, annex, para. 1(a).

¹⁰⁹⁵ Decision 6/CP.17, FCCC/CP/2011/9/Add.2, para. 1.

¹⁰⁹⁶ Views on potential future areas of work of the Nairobi work programme on impacts, vulnerability and adaptation to climate change, FCCC/SBSTA/2013/MISC.2.

¹⁰⁹⁷ Nairobi work programme on impacts, vulnerability and adaptation to climate change, Draft conclusions proposed by the Chair, SBSTA 38, FCCC/SBSTA/2013/L.9.

¹⁰⁹⁸ Draft COP decision prepared at SBSTA 38, FCCC/SBSTA/2013/L.9, Annex, para. 3.

- organizations (in 2011, only one such organization had joined the NWP).¹⁰⁹⁹ Additional capacity building activities could, in the framework of the NWP, be targeted at women organization and indigenous representatives.
- Considering that climate impacts adversely men and women in differentiated terms, Finland could advocate for the adoption of guidelines in order to guarantee that all activities undergone under the Nairobi Work Program and aiming at the collection of information collect **sex-disaggregated data** to enable gender-responsive adaptation.
 - Finland should support and **engage fully in the upcoming activities dedicated to cross-cutting issues** – incl. the workshop scheduled for spring 2014 – and act as a champion of the dissemination of the results of these activities into the various areas of work of the renewed NWP.

4.4.2. Cancun Adaptation Framework

The Bali Action Plan adopted at COP-13 provided the mandate for new negotiations in relation to enhanced action on adaptation.¹¹⁰⁰ After three years of negotiations, this mandate resulted in the establishment of the Cancun Adaptation Framework at the COP-16.¹¹⁰¹ The parties created a process for the support of National Adaptation Plans (NAPs) submitted by Least Developed Countries and established an Adaptation Committee to ensure the coherent implementation of the Cancun Adaptation Framework at the international level.¹¹⁰² According to the Cancun Agreements, both NAPs and Adaptation Committee should be based on a gender-sensitive and participatory approach, taking into consideration vulnerable groups and communities and should be guided when appropriate by traditional and indigenous knowledge.¹¹⁰³

National Adaptation Plans

In 2011, the SBI considered the modalities and guidelines for the NAPs process. In national submissions, parties highlighted the importance for the NAP process to include the meaningful participation of *“civil society, particularly women’s groups and gender-focused organizations [...] and of the most vulnerable/disadvantaged groups, including indigenous people”*.¹¹⁰⁴ Parties also suggested capacity-building activities to focus on, inter alia, strengthening women’s groups and integrating gender considerations in adaptation.¹¹⁰⁵ An expert meeting organized by the SBI further noted the importance to

¹⁰⁹⁹ Submission by WEDO to the UNFCCC secretariat, 20th September 2011, access at <http://unfccc.int/resource/docs/2011/smsn/ngo/336.pdf> (accessed 6 June 2013).

¹¹⁰⁰ Decision 1/CP.13, FCCC/CP/2007/6/Add.1, para. 1(c)

¹¹⁰¹ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 13.

¹¹⁰² Decision 1/CP.16, FCCC/CP/2010/7/Add.1, Para. 15 and 20.

¹¹⁰³ Ibid., para 12.

¹¹⁰⁴ Synthesis report on the process and the modalities and guidelines for national adaptation plans, FCCC/SBI/2011/13, para. 60.

¹¹⁰⁵ Ibid., para 102(a) and (d).

integrate gender considerations and other factors of vulnerability into national adaptation processes.¹¹⁰⁶ The experts further called the guidelines to require performing vulnerability and adaptation assessments, identifying adaptation activities for specific key socio-economic sectors and integrating factors of vulnerability, including gender aspects.¹¹⁰⁷ Additionally to these recommendations, the organization WEDO suggested in a submission to create synergies between NAPs, gender in national development plans and gender-related international commitments and agreements outside of the UNFCCC.¹¹⁰⁸

In Durban, the COP adopted the modalities to support and enable LDCs to formulate and implement NAPs, urged developed countries and financial entities to provide financial support to NAPs, and invited other developing countries to formulate NAPs.¹¹⁰⁹ The COP also adopted initial guidelines for the formulation of NAPs by LDCs.¹¹¹⁰ The initial guidelines emphasize that, when developing NAPs, parties should take into consideration the “effective and continued promotion of participatory and gender-sensitive approaches coordinated with sustainable development objectives, policies, plans and programmes”.¹¹¹¹ Since COP17, the SBI has mainly focused its work related to NAPs on the issue of mobilizing financial support for the NAPs. According to the Durban decision, the COP might decide to review the guidelines at COP¹¹¹².

Adaptation Committee

The Adaptation committee constitute the second element of the Cancun Adaptation Framework and was established with the objective to promote coherent implementation of the enhanced adaptation action in considering relevant information, facilitating synergies, providing support and recommendations to parties.¹¹¹³

Throughout the four negotiating sessions taking place in 2011, parties negotiated the modalities, procedures, as well as a list of indicative activities for the Adaptation Committee. These negotiations led to the adoption of the full terms of reference of the Adaptation Committee in Durban.¹¹¹⁴ In their submissions on compositions, modalities and procedures for the Adaptation Committee, some parties called for gender balance among the members of the Adaptation committee.¹¹¹⁵ The current composition of the committee

¹¹⁰⁶ Report on the expert meeting on the process and the modalities and guidelines for the formulation and implementation of national adaptation plans, FCCC/SBI/2011/12, para. 51(e) and 63 (g).

¹¹⁰⁷ Ibid., para 66 (a) and (c).

¹¹⁰⁸ Submission by WEDO to the UNFCCC secretariat, 15th August 2011, access at <http://unfccc.int/resource/docs/2011/smsn/ngo/313.pdf> (accessed 6 June 2013), referring to CEDAW, Hyogo Framework for Action, CBD, UNCCD as example of such international commitments.

¹¹⁰⁹ Decision 5/CP.17, FCCC/CP/2011/9/Add.1.

¹¹¹⁰ Ibid., Annex.

¹¹¹¹ Ibid., Annex, Para. 3.

¹¹¹² Decision 2/CP.17, FCCC/CP/2011/9/Add.1, para. 9.

¹¹¹³ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 20.

¹¹¹⁴ Decision 2/CP.17, FCCC/CP/2011/9/Add.1, para 92 ff. and Annex V.

¹¹¹⁵ FCCC/AWGLCA/2011/3, para. 61.

however poorly reflects the objective of gender balance.¹¹¹⁶ Parties also suggested that expertise in “different social, economic and ecological dimensions of adaptation, including gender” was considered as a relevant criterion for nominations of members.¹¹¹⁷ This suggestion was however removed from the procedures adopted in Durban.

The Adaptation Committee held its first meeting in September 2012 and adopted a three-years work plan which was submitted to the COP.¹¹¹⁸ Of particular interest in the context of the present report, the work plan foresees the convening of an expert workshop on best practices and needs of local and indigenous communities. This workshop, foreseen for the third quarter of 2014, is expected to contribute to “reduce duplication, address gaps and strengthen synergies”.¹¹¹⁹ The COP-18 approved the work plan and encouraged the Adaptation Committee to continue its work.¹¹²⁰

At the time of the publication of the present report, the Adaptation Committee had already held two meetings in 2013, with one additional meeting scheduled before the COP. None of the outcomes of the meetings held up to now make explicit references to the issue of considering gender-sensitive approaches. While this might be justified partially by the focus of the first meetings of the Adaptation Committee mainly on organizational aspects of its work, this lack of consideration and the absence of any related action in the program of action of the “*overall advisory body to the COP on adaptation to the adverse effects of climate change*”¹¹²¹ appear at odd with the scope of the Cancun Adaptation Framework.

4.5. Loss & Damage

4.5.1. Introduction

Recognizing that some local communities and states will face impacts of climate that can no longer be addressed through adaptation policies, the parties to the convention agreed in Cancun to consider approaches to “*address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change*”.¹¹²² The Cancun Agreements thus established a work program to consider, through workshops and expert meetings, approaches to understand and mitigate loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events.¹¹²³ The SBI was further mandated to prepare recommendations to the COP at its eighteenth session. As it constitutes one

¹¹¹⁶ Currently, the Adaptation Committee contains however less than 25% of women.

¹¹¹⁷ FCCC/AWGLCA/2011/3, para. 63.

¹¹¹⁸ Report of the Adaptation Committee, FCCC/SB/2012/3.

¹¹¹⁹ Ibid., at 9-10, action 3(v).

¹¹²⁰ Decision 11/CP.18, FCCC/CP/2012/8/Add.2.

¹¹²¹ Decision 2/CP.17, FCCC/CP/2011/9/Add.1, para. 92.

¹¹²² Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 26.

¹¹²³ Ibid., para 25.

element of the Cancun Adaptation Framework, the work programme on loss and damage should follow a “*country-driven, gender-sensitive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional and indigenous knowledge*”.¹¹²⁴

This area of the negotiations could possibly provide an opportunity to guarantee the respect of human rights of local communities at the front line of the adverse impacts of climate change. Since the adoption of the Cancun Agreements, these negotiations have however proven to be highly controversial, as developed and developing countries have diverging preferences for the approaches that could be adopted to address loss and damages in the UNFCCC framework.

4.5.2. The Work Programme on Loss and Damage

The implementation of the decision began in spring 2011 by a consultations exercise in order to collect the views from parties and observers on the elements to be included in the work programme. These consultations highlighted as a guiding principle for the work programme:

*(a) Attention to the particularly vulnerable: focusing on those that are particularly vulnerable owing to the high degree of exposure to the physical impacts of climate change and limited institutional and financial capacity to respond, and prioritizing activities that address their urgent, immediate and specific needs[, including...](iv) Other vulnerable groups that are traditionally underrepresented owing to factors such as geographical location, minority status and disability, including indigenous peoples in developing countries, the poor, women and children;*¹¹²⁵

During the two years duration of the initial work programme, a series of workshops and expert meetings was organized along three thematic area: assessing the risk of loss and damage (thematic area I), range of approaches to address loss and damage (thematic area II), and the role of the convention in doing so (thematic area III).¹¹²⁶

The outcomes of the thematic area II (range of approaches to address loss and damage) contain most of the references to women and indigenous peoples. The literature review conducted by the secretariat highlighted the role of micro finance targeted at women in order to mitigate the consequences of climate impacts on communities¹¹²⁷ while

¹¹²⁴ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para 12.

¹¹²⁵ Synthesis report on views and information on the elements to be included in the work programme on loss and damage, FCCC/SBI/2011/3, Para. 18.

¹¹²⁶ Report of SBI 34, FCCC/SBI/2011/7, para. 109.

¹¹²⁷ A literature review on the topics in the context of thematic area 2 of the work programme on loss and damage: a range of approaches to address loss and damage associated with the adverse effects of climate change FCCC/SBI/2012/INF.14.

the technical paper latter prepared by the secretariat identified *gender initiatives* as a possible approach to address the drivers of vulnerability and to strengthening the resilience of vulnerable communities to climate related and non-climate related stressors.¹¹²⁸ The report of the expert meetings emphasized the importance of inclusive participatory approaches for data-collection, emphasizing the importance of the participation of groups such as women and children and noting that such approaches “*enable a focus not only on the hazard (through a top-down approach) but also on the vulnerability (through a bottom-up approach) and facilitates resilience-building*”.¹¹²⁹ In relation to indigenous peoples, all three outcomes from the work undergone under the thematic area emphasize the importance of indigenous knowledge and know-how in gathering data and reducing risks. In May 2012, the report of the SBI built on the outcomes of the three thematic areas and concluded that:

*(c) Gaps in the assessment of the risk of loss and damage for vulnerable communities and populations, including women and children, can be addressed by involving these communities and populations in risk assessment processes; (d) The use of local and indigenous knowledge and observations helps to fill gaps in information about historical exposure and vulnerability;*¹¹³⁰

In Doha, the SBI reported on the progress of the work programme on loss and damages, highlighted the lack of agreement over a single approach to address this issue as well as the need to deepen understanding of many aspects associated to this thematic.¹¹³¹ After intense negotiations in the final night of the conference, the parties adopted a decision to note the progress achieved over the previous two years and provide guidance to move these discussions forward.

The decision invites all parties to enhance action on addressing loss and damages by undertaking, inter alia, the “*involv[ement] of vulnerable communities and populations [...] in the assessment of and response to loss and damage*”.¹¹³² Among the elements identified as priorities for the continuation of the activities of the work program, the COP-18 decision called for further understanding of:

how loss and damage associated with the adverse effects of climate change affects those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability, and how the

¹¹²⁸ FCCC/TP/2012/7, Box 2, at 13.

¹¹²⁹ Report on the regional expert meetings on a range of approaches to address loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events, FCCC/SBI/2012/29, para. 16.

¹¹³⁰ Report of the SBI at its 36th session, FCCC/SBI/2012/15, para 150(c) and (d).

¹¹³¹ See Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity, Revised proposal by the President Draft decision -/CP.18, FCCC/CP/2012/L.4/Rev.1.

¹¹³² Decision 3/CP.18, FCCC/CP/2012/8/Add.1, para 6(f).

*implementation of approaches to address loss and damage can benefit those segments of the population;*¹¹³³

The decision also called for the collection of gender-disaggregated data in order to assess the risk of loss and damage.¹¹³⁴ Finally, the COP-18 decision agreed to the establishment, at COP-19, of institutional arrangements in order to enhance knowledge and understanding, to foster dialogue, and to enhance action and support to address loss and damages.¹¹³⁵ Considering the impossibility for the SBI to conduct its work at the 2013 intersessional meeting due to the failure to adopt its agenda, no formal progress has however been accomplished this year in the negotiations of this institutional arrangements.

4.5.3. Prospects and Recommendations

- Some commentators have highlighted the risk that, due to the political realities of the climate negotiations under the UNFCCC, the outcome of the mandate related to loss and damage result in a loss of legal rights by the most vulnerable countries.¹¹³⁶ Indeed, developed countries are not likely to accept under the UNFCCC mechanisms that would provide an effective remedy to most vulnerable countries on the basis of principles of international law such as the *no harm principle* and the state responsibility for an internationally wrongful act. In this context, the negotiations addressing loss and damage under the UNFCCC must ensure that their outcomes **do not constitute a regression** compared to other existing norms of international law.
- The UNFCCC process should on the contrary **cooperate directly with other international fora** having acquired an expertise in subjects relevant to the issue of loss and damage, such as in relation to aspects related to human rights law,¹¹³⁷ refugees law, and both internal and cross-border migration. One such international initiative directly relevant to address issues related to loss and damage is the **Nansen Initiative**, a state-led consultative process considering approaches to address to the needs of people displaced across international borders in the context of natural disasters, including the effects of climate change. Finland could support more actively this initiative and the consideration of the relevance of its outcomes in the UN climate framework to ensure that the protection of the rights of persons by climate change.

¹¹³³ Ibid, para. 7(a)iii.

¹¹³⁴ Ibid, para 7(b).

¹¹³⁵ Ibid, para 5 and 9.

¹¹³⁶ See for instance Joy Hyvarinen, “Loss and damage caused by climate change: legal strategies for vulnerable countries”, Foundation for International Environmental Law and Development (2012), available at http://www.field.org.uk/sites/field.org.uk/files/papers/field_loss_damage_legal_strategies_oct_12.pdf (last accessed on 23 March 2013).

¹¹³⁷ Special procedures established under the Human Rights Council have delivered numerous assessment of the adverse impacts of climate change on local communities, including Oliver de Schutter, “Climate Change and the Right to food”, Heinrich Boll foundation (2009) and the report by Rachel Rolnik, Special Rapporteur on Adequate Housing on her visit to the Maldives (UN Doc A/HRC/13/20/Add.3).

- Independent of the form of the institutional arrangements established as an outcome of the work programme on loss and damage, the participation of stakeholders in the process leading to this decision as well as in the implementation and governance of this arrangement will be key to ensure that it can satisfactorily contribute to protect the rights of the communities most directly affected by the adverse impacts of climate change. Specific support could be provided to **ensure the representation of the most vulnerable communities and peoples**, including women and indigenous peoples, in order to design the arrangements in the most effective manner for these groups. Furthermore the continuation of the activities of the work programme should adopt an approach more sensitive to vulnerable groups in order to systematically assess the burden for such groups of any adverse impact discussed as well as the potential benefit of any arrangement considered.
- At present, the most prominent proposal for the establishment of an institutional arrangement is the creation of (a) risk-transfer facility(ies) in the form of (a) insurance(s) mechanism. The experience of Caribbean states with the Caribbean Catastrophe Risk Insurance Facility has been highlighted throughout the work programme as a best practice providing a risk-transfer mechanism at a regional scale. If established, this risk-transfer mechanism should be accompanied by specific guidelines and policies in order to **promote access to its services by most vulnerable groups**, including through the implementation of gender-sensitive design.
- However, not all adverse impacts of climate change will be insurable and unavoidable loss and damage, for instance resulting from slow onset events, will need to be addressed through a different mechanism.¹¹³⁸ Therefore, a redress – or **compensation and rehabilitation** – mechanism has been proposed in addition to any risk-transfer arrangement. The loss and damage addressed in this context should be considered from the perspective of lost opportunities to achieve sustainable development.¹¹³⁹
- In addition, affected individuals and communities must be able to **seek directly compensation for their losses**. The loss and damage mechanism should therefore allow stakeholders to submit relevant information, including firsthand accounts of the impacts of climate change, and make requests for compensation.¹¹⁴⁰ Joy Hyvarinen reminded of the relevance of the principles contained in the 2005 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian*

¹¹³⁸ See for instance ActionAid, Care, WWF, “Tackling the Limits to Adaptation: An International Framework to Address ‘Loss And Damage’ from Climate Change Impacts”, (2012), at 23.

¹¹³⁹ Juan P. Hoffmaister and Doreen Stabinsky, “Loss and damage: Some key issues and considerations for SIDS expert meeting”, Briefing Paper on Loss and Damage - SIDS Expert Meeting, 9-11 October 2012, Bridgetown, Barbados, at 4

¹¹⁴⁰ Alyssa Johl, Sébastien Duyck, Promoting Human Rights in the Future Climate Regime, *Ethics, Policy and Environment*, Vol. 15, No. 3, October 2012, at 302

*Law*¹¹⁴¹: restitution; compensation; rehabilitation; satisfaction; and guarantees of non-repetition.

4.6. Providing a legal remedy – towards a grievance mechanism?

The establishment of a redress or grievance mechanism under the UNFCCC would provide an opportunity to implement the third pillar of procedural rights and provide a remedy when access to information and public participation have failed/not sufficed to prevent outcomes and decisions with adverse impacts for the right of individuals. This issue is particularly relevant in the context of decisions adopted by intergovernmental institutions, which directly target individuals.¹¹⁴² Currently, only parties may appeal to the decision of the COP/MOP to the enforcement branch of the compliance committee,¹¹⁴³ while such mechanism does not currently exist for decisions made by its subsidiary body.¹¹⁴⁴

The establishment of grievance mechanisms are currently under discussion in relation to operating entities established under the UNFCCC, such as in relation to the Clean Development Mechanism, the Adaptation Fund, REDD and to the Green Climate Fund. However, the proposals under discussions offer only a partial remedy the scope of which remains limited to specific cases and decisions. The implementation of such specific mandates is justified by the impact that each of the instruments and entities concerned could possibly have on individuals.

The current experience of the CDM Executive Board and its incapacity to act upon information of projects being associated with human rights abuses has highlighted the serious consequence of the lack of appropriate remedies. The legitimacy of the UN Climate framework cannot afford the repetition of such experience due to the lack of foresights of the original mandate.¹¹⁴⁵

A growing number of international institutions have established such grievance mechanisms, including the EU, Multilateral Development Banks, the World Bank and the

¹¹⁴¹ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. A/RES/60/147 21 March 2006.

¹¹⁴² Charlotte Streck and Jolene Lin note the examples of the UN Security Council with regards to individuals directly affected by individual sanctions, and the Court of Arbitration for Sport in relation to decisions adopted by the World Anti-Doping Agency. Charlotte Streck and Jolene Lin, “Making Markets Work: A Review of CDM Performance and the Need for Reform”, 19 *European Journal of International Law* (2008), 428. For further analogies with other administrative review processes established in relation to decisions adopted by international institutions, see also the elements drawn from six other international mechanisms by the FCCC secretariat, Procedures, mechanisms and institutional arrangements for appeals against the decisions of the Executive Board of the clean development mechanism, FCCC/TP/2011/3. The processes concerned are mentioned in para. 11.

¹¹⁴³ Decision 27/CMP.1, FCCC/KP/CMP/2005/8/Add.3, annex, section VII.

¹¹⁴⁴ Christiana Figueres and Charlotte Streck, “A Post-2012 Vision for the Clean Development Mechanism”, in David Freestone and Charlotte Streck (eds), *Legal Aspects of Carbon Trading: Kyoto, Copenhagen and Beyond*, Oxford University Press (2009), at 575.

¹¹⁴⁵ See above.

OECD – respectively with the establishment of an ombudsperson, an independent review mechanism, an inspection panel and a communication procedure. Other international institutions are currently considering the establishment of such a mechanism, in which case the assessment of different institutional and procedural options could provide a beneficial experience for the UNFCCC.¹¹⁴⁶ The establishment of such mechanisms has contributed greatly to increase the legitimacy of – and thus public support for – the related regimes.

A technical paper produced by the secretariat in the context of the negotiations towards the establishment of an appeal procedure to the decisions of the CDM Executive Board already considered in 2011 the relevance of the experience provided by seven remedy mechanisms “which review administrative decisions taken by international bodies”.¹¹⁴⁷

A grievance mechanism would provide a powerful tool to ensure the full implementation of the safeguard policies established in various areas of the UNFCCC framework when no other remedy is associated to them.¹¹⁴⁸ It could also possibly guarantee the effective respect by parties in their implementation of the convention of other international norms such as the UN Charter and international human rights norms – including the Universal Declaration of Human Rights, the UN Declaration on the Rights of Indigenous Peoples and the Convention to Eliminate All Forms of Discrimination Against Women.¹¹⁴⁹ If designed appropriately, the establishment of such a mechanism could particularly address the issue at the core of the present report in offering additional remedy for marginalized or vulnerable groups adversely impacted by the implementation of the convention.

In the Cancun Agreements, the parties explicitly described the need to consider ‘information from those affected, and evidence of actual impacts’ of response measures”.¹¹⁵⁰ So far, the implementation of this mandate has been mainly associated with the provision of “a forum on the impact of the implementation of response measures”.¹¹⁵¹ The outcome of the COP-17 urged the parties to “give full consideration to the positive and negative impacts of the implementation of response measures to mitigate climate change on society and on all vulnerable groups, in particular women and children.”¹¹⁵² The parties also formally established the forum and adopted a work program on response

¹¹⁴⁶ See for instance the discussion paper prepared by Jennifer Laughlin for UNDP in 2012: Proposal for Environmental and Social Compliance Review and Grievance Processes, available at http://www.un-ngls.org/IMG/pdf/UNDP_Discussion_Paper_on_Compliance_and_Grievance_April_2012-EN_1_.pdf (last accessed 11 July 2013).

¹¹⁴⁷ Procedures, mechanisms and institutional arrangements for appeals against the decisions of the Executive Board of the clean development mechanism - Technical paper, FCCC/TP/2011/3

¹¹⁴⁸ Alyssa Johl, Sébastien Duyck, Promoting Human Rights in the Future Climate Regime, *Ethics, Policy and Environment*, Vol. 15, No. 3, October 2012, at 301.

¹¹⁴⁹ Decision 1/CP.16, FCCC/CP/2010/7/Add.1, para. 8.

¹¹⁵⁰ Ibid para 92.

¹¹⁵¹ Ibid para 93.

¹¹⁵² Decision 2/CP.17, FCCC/CP/2011/9/Add.1, para. 90.

measures and its modalities.¹¹⁵³ The subsidiary bodies are mandated to review the work of the forum and to make a recommendation on its continuation to the COP-19.¹¹⁵⁴ This review could provide an opportunity for the work programme to consider the establishment of a grievance mechanism under the convention.

- Finland should request **additional research on possible benefits and modalities of the creation of a grievance mechanism** established under the convention. A case study of best practices among other international institutions and relevant elements for the UNFCCC would provide a solid basis for the opening of formal discussions within the UNFCCC on this issue.¹¹⁵⁵
- The current negotiations towards a new framework post 2020 offers the opportunity to include the establishment of such a mechanism as part of the package decisions that will be adopted in 2015. Finland should **advocate for the establishment – or at least for the adoption of a specific mandate** to establish such a mechanism as part of the outcome of the work of the Ad-hoc Working Group on the Durban Platform.

¹¹⁵³ Decision 8/CP.17, FCCC/CP/2011/9/Add.2, para. 1.

¹¹⁵⁴ Ibid para 5

¹¹⁵⁵ The briefing paper prepared by CIEL, Earth Justice and ClientEarth proposes in more detail some of the elements that could serve as a basis for the establishment of a grievance mechanism under the UNFCCC. See Alyssa Johl, Martin Wagner, Daniela Rey (2011), *Grievance Mechanisms in the UNFCCC: an essential component of an international safeguard system*, available at <http://www.scribd.com/doc/142917527/Grievance-Mechanisms-in-the-UNFCCC-2-Dec-2011>, last accessed: 8 July 2013.

Chapter 5. Development & Aid

5.1. A General Overview

Development aid and development discourse are characterized by shifts in fashions and paradigms. Over the last decade, the human rights based approach (HRBA) has slowly taken over an earlier emphasis on basic needs and services.¹¹⁵⁶ Recently, following the expansion of the climate change regime, development aid has taken a more environmental. Climate actions and projects have, consequently, led to a new thematic prioritization in development assistance – marked by increasing number of projects that deal with both mitigation and adaptation.

However, development interventions that do not consider existing socio-economic factors and do not attend to the vulnerability of already marginalized groups' adaptive capacity and resilience can reinforce poor situations. First, development cooperation projects may result in maladaptation to climate change.¹¹⁵⁷ Second, climate-funding mechanisms are accused of introducing even greater aid unpredictability, thus, undermining the limited capacity of partners to develop long-term approaches to adaptation.¹¹⁵⁸ Third, as the number of cross-cutting issues incorporated into policy-making increases (climate joining focus on gender, minorities, youth, human rights, trade, security, etc.), the aid is faced with "mainstreaming overload",¹¹⁵⁹ resulting in the complete irrelevance of the mainstreaming of particular topics. Fourth, ownership of a project (one of aid effectiveness principles) is undermined when a donor comes to the field with ready-made emphasis on climate action and human rights. To date, the reconciliation of local ownership of climate change related development plans with upholding donors' values and requirements has proven to be a challenging endeavor.¹¹⁶⁰

International human rights instruments may serve as a platform to address the challenges of aid-climate nexus. To some degree, such efforts are already taking place. At the Bali COP in 2007, for example, a policy marker to track climate change adaptation activities within Official Development Assistance (ODA) was developed.¹¹⁶¹ An effort to address such issues requires an understanding of existing institutions at multiple scales. Furthermore, this must be coupled with the genuine participation of targeted groups in

¹¹⁵⁶ Uvin (2004); Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development. A rights-based approach focuses on empowering individuals with, among others, actionable rights, meaningful participation, and access to information. In Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-Böll-Stiftung, 41.

¹¹⁵⁷ OECD (2005) Bridge over troubled waters: Linking Climate Change and Development.

¹¹⁵⁸ BetterAid (2011). Development effectiveness in development cooperation: a rights-based perspective.

¹¹⁵⁹ OECD (2005) Bridge over troubled waters: Linking Climate Change and Development.

¹¹⁶⁰ OECD DAC (2006). Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges. Uvin (2004); See also Sandrine MALJEAN-DUBOIS (2012). Chapter 3. European Union Cooperation, Development and Migration Policy. In European Parliament (2012). Human Rights and Climate Change: EU Policy Options. Study conducted by University of Paris 13 (Christel Cournil). EP Directorate General External Policies.

¹¹⁶¹ Chapter 3. European Union Cooperation, Development and Migration Policy, in European Parliament (2012). Human Rights and Climate Change: EU Policy Options. Study conducted by University of Paris 13 (Christel Cournil). EP Directorate General External Policies, 57.

policy/project design, implementation, monitoring and evaluation, at all levels of governance.

Climate change draws attention to states' human rights obligations and commitments, as well as the sustainability of their development efforts (both aid and development strategies in the Global South).¹¹⁶² It is as a factor that heavily influences the developmental prospects and futures of the low income countries and disadvantaged communities. This has a bearing on development practices and poses challenges, as well as barriers, to development in general. The ability to meet the United Nations Development Goals by 2015 and beyond as well as new developments targets post-2015, thus, requires policy-makers to revisit existing development models, especially those regarding access to and the use of resources.¹¹⁶³ There is "growing recognition of the crucial links between human rights violations, poverty, exclusion, vulnerability [...] [and] vital role human rights play in mobilising social change; transforming state-society relations; removing barriers faced by the poor in accessing services." That also includes a human rights perspective on the MDGs, especially sectors like health, education, sustainable livelihoods, and natural resource management. Progress in the area of women's rights (alongside children's rights) has been particularly significant.

olistic and sustainable development policies that effectively integrate social, environmental, and economic aspects provide various gains.¹¹⁶⁴ Systematic planning – including national adaptation strategies and action plans – is required in reducing risks (such as droughts and floods) and raising communities' resilience.¹¹⁶⁵ Integrating adaptation measures (funding, plans, and strategies) into development cooperation is vital for developing countries, especially least developed countries and Small Island developing states.¹¹⁶⁶ This is, in part, because they have fewer resources – in terms of human capacity and financial resources – for social, technological, and financial adaptation.¹¹⁶⁷

The vulnerability of marginalized groups often goes unnoticed, which means that they are less likely to be heard at the negotiating table. They are also not likely to be included in consultations with political weight, or be the beneficiaries of climate change funding (especially concerning mitigation). In the same time, the livelihoods of marginalized groups, such as the approximately 450 million poor, entirely depend on ecosystem services, possibly disturbed by climate change impacts.¹¹⁶⁸

¹¹⁶² A human rights-based approach to development cooperation has a legal basis founded on international conventions and human rights principles (including universality, the ban on discrimination, equality, accountability, and the rule of law) binding on state governments. In Ministry for Foreign Affairs of Finland (14/2009) "Government Report to Parliament on the Human Rights Policy of Finland", 61.

¹¹⁶³ In Humphreys, Stephen. (2010) *Human Rights and Climate Change*. Cambridge: Cambridge University Press, 11; *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 5.

¹¹⁶⁴ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 30.

¹¹⁶⁵ *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 37.

¹¹⁶⁶ (27, Ministry of Foreign Affairs, 2012) *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 50.

¹¹⁶⁷ *Climate change impacts, vulnerabilities and adaptation in developing countries*. (2007) Bonn, Germany: United Nations Framework Convention on Climate Change, 36.

¹¹⁶⁸ Cameron, Edward (2011). *Development, climate change and human rights*. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development.

Furthermore, as noted in Section 2.6. Women's Rights **in International Law** according to the 2005 UNDP Human Development Report, gender is one of the world's strongest markers of disadvantage. Gender inequality and its associated vulnerabilities can, thus, pose serious threats to women's resilience and adaptability, and even prevent their ability to effectively engage in development.¹¹⁶⁹ This highlights the importance of partnerships, like the UNDP and GGCA (Global Gender and Climate Alliance) collaboration, to mainstream gender into climate finance mechanisms. Moreover, a shift in power between Northern development agencies and Southern women need to accompany consultative and participatory engagements. Empowerment is to mean helping "to create the conditions whereby women can become the agents of their own development and empowerment" via, *inter alia*, full participation in powers structures and decision-making. In this context, women's multiple roles and interests – not exclusively economic independence – should be taken into account.

International assistance for sustainable development can help support adaptation in the context of capacity building, technology transfer, and funding. As a result of the evolution and rapprochement of human rights, climate change, and development cooperation; current development assistance¹¹⁷⁰ must integrate a HRBA, climate concerns, as well as a (recently emphasised) focus on aid effectiveness (especially regarding ownership and alignment with a focus on results).¹¹⁷¹ Human rights help "identify and prioritize excluded and marginalized groups as human rights-based programming directly tackles disparities" (in particular children, women and minorities).¹¹⁷²

The integration of human rights into development aid may take the form of (1) implicit human rights work, (2) explicit human rights-focused projects, (3) human rights dialogue with partner governments, (4) human rights mainstreaming, and (5) a human rights-based approach (HRBA).¹¹⁷³ HRBA is currently advocated by various standard-setters (e.g. UN agencies, OECD DAC) as well as adopted within Finnish development aid. "The UN system has been leading the way with a process of human rights mainstreaming since 1997."¹¹⁷⁴ In addition, UN institutions adopted influential *Common Understanding on the Human Rights Based Approach to Development Cooperation*.¹¹⁷⁵ The document states that all programmes of development cooperation need to further the realisation of human rights and develop capacities of both right-holders and duty-bearers (primarily states and public authorities). The advantage of including human rights into aid

¹¹⁶⁹ UNDP. (2011) "Ensuring Gender Equity in Climate Change Financing," 8.

¹¹⁷⁰ When the most progressive performance and standards are taken into account (expressed both by the policies of states considered at the forefront of aid quality and quantity, including Finland, as well as standard-setters, such as OECD-DAC, UNDP, World Bank, of the EU).

¹¹⁷¹ Following *Paris Declaration*¹¹⁷¹ (accused by some to be for example *gender-blind*, despite later developments in 2008 Accra Agenda for Action¹¹⁷¹) See, Paris Declaration on Aid Effectiveness 2005, as well as Accra Agenda for Action 2008.

¹¹⁷² OECD DAC (2007). DAS Action-Oriented Policy Paper on Human Rights and Development; Uvin 2004. Bosch, Rahel. Human Rights and Aid Effectiveness, *Strengthening Health Care Systems*.

¹¹⁷³ OECD DAC (2006). Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges.

¹¹⁷⁴ OECD DAC (2007). DAS Action-Oriented Policy Paper on Human Rights and Development, p. 5.

¹¹⁷⁵ The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies. Access at: http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (last accessed: July 27, 2013).

policy is improved assistance quality, including: (1) providing aid that is undertaken with legitimacy and high moral ground; (2) the accountability and identification of right-holders and duty-bearers; (3) a joint platform of understanding between donors and partner countries; (4) and the promotion of good practices and broadly understood good governance.

5.2. Finland's Development Cooperation

Finland has a possibility to implement its focus on groups most vulnerable to climate change in development assistance:

- a) through its own bilateral development policy;
- b) via its influence on the most development assistance standard-setters, including the OECD-Development Assistance Committee, the United Nations Development Programme, and the World Bank Group.

Additionally (outside the scope of this report), Finland may influence (by developing best practices in its own development assistance and input into policy elaboration) the development policy of the European Union, which aims for coherence among its 28 members states. Together, they are responsible for 60% of world's ODA flows.¹¹⁷⁶

Finland's development cooperation takes a human rights-based – comprising civil, political, economic, social, and cultural rights – and environmentally sustainable approach.¹¹⁷⁷ Currently, gender, reducing inequality and climate sustainability constitute cross-cutting objectives of Finnish development aid. As Finland's Aid programme for 2012 states:

*Vulnerability may be reduced by integrating adaptation measures into development cooperation. Development activities that do not take climate change into account can reinforce its detrimental effects and increase the risks – or can go completely wasted. [...] Particular attention will be paid to the roles of women, children and indigenous peoples in adapting to and in combating climate change.*¹¹⁷⁸

Moreover, “citizens’ participation and the strengthening of their opportunities to exert influence are [seen as] preconditions for sustainable development.”¹¹⁷⁹

¹¹⁷⁶ Sandrine MALJEAN-DUBOIS (2012). Chapter 3. European Union Cooperation, Development and Migration Policy. In European Parliament (2012). Human Rights and Climate Change: EU Policy Options. Study conducted by University of Paris 13 (Christel Cournil). EP Directorate General External Policies.

¹¹⁷⁷ This is based on the UN Universal Declaration of Human Rights – civil, political, economic, social, and cultural rights – and the notion that all humans are born free and equal in dignity and rights. This includes the equal opportunity for all persons to influence and participate in defining and implementing development policy. “Finland's National Action Plan”, UN Security Council Resolution 1325 (2000) “Women, Peace, Security”, 12, access at: http://www.peacewomen.org/assets/file/finland_nap_2012.pdf (last accessed: July 27, 2013); UNFCCC/IDR.5/FIN, 2010, 27/28.

¹¹⁷⁸ Ministry of Foreign Affairs (2012). Finland's Development Policy Programme. Government Decision-In-Principle 16 February 2012.

¹¹⁷⁹ Ibid.

Finland has a particularly strong record in incorporating and promoting gender equality and women's empowerment in development aid. Finland identifies gender inequalities as a key aspect of vulnerability and regards climate change as a factor potentially contributing to increasing the existing gender gap.¹¹⁸⁰ Policy actions include aim to: (1) give gender perspective political visibility in climate and development-related positions and statements; (2) support women's participation in international and national climate talks; (3) emphasise the support of women in capacity building in developing countries; and (4) strengthening the gender perspective in climate change cooperation.¹¹⁸¹ With regard to indigenous peoples, issues of ongoing discrimination and rights to use natural resources are strongly highlighted.

5.3. International Conference on Population and Development & the UN MDGs

At the 1994 United Nations International Conference on Population and Development (ICPD), 179 countries adopted a 20-year programme of Action (POA), which acknowledged gender equality – clearly linking women's universal human rights and the achievement of sustainable development goals – as a cornerstone of population and development policies – in stating that, “[t]he empowerment of women and the improvement of their political, social and health status is a highly important end in itself. In addition, it is essential for sustainable development.... Experience shows that population and development programmes are most effective when steps have simultaneously been taken to improve the status of women.”¹¹⁸² Many of the population and development goals identified at the ICPD were incorporated into the MDGs. Approaching its twenty year anniversary, the UN General Assembly passed resolution A/65/234 (2010), whereby it established a roadmap for achieving the ICPD beyond 2014. The UN Population Fund (UNFPA) has, in turn, been mandated to undertake an operational review of the programmes' implementation, as well as a special report with recommendations for action from the UN Secretary General to be presented at the UN Conference on Population and Development in 2014.¹¹⁸³ In order to ensure that the ICPD review is a key foundation for the UN development agenda post-2015, the leadership of the UNDP and UNFPA are encouraging UN Resident Coordinators to work with UN Country Teams, including the

¹¹⁸⁰ Ministry of Foreign Affairs (website). Climate Change and Gender, access at <http://formin.finland.fi/public/default.aspx?nodeid=41997&contentlan=2&culture=en-US> Climate Change and Gender (last accessed 2 January 2012); Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development, p. 18.

¹¹⁸¹ Government of Finland (2009). Replies to the Questionnaire to Member State prepared by the Office of the High Commissioner for Human Rights, pursuant to Human Rights Council resolution 7/23 on human rights and climate change. Geneva: Government of Finland. As cited in: Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development.

¹¹⁸² "Women & Girls." *ICPD*. Access at: <http://icpdbeyond2014.org/rights-development/view/1-women-girls> (last accessed: 27 July 2013).

¹¹⁸³ "ICPD Beyond 2014 and the post-2015 UN development agenda." *ICPD*. N.p., n.d. Web. 27 July 2013. Access at: <http://icpdbeyond2014.org/about/view/14-icpd-beyond-2014-and-the-post-2015-development-agenda> (last accessed: 27 July 2013).

World Bank at the country-level, to promote and support close links between both processes. The ICPD Beyond 2014 aims to identify barriers to women's equality and empowerment and will, in turn, provide clear recommendations for governments. *In this regard, Finland should ensure that the role and vulnerability of women and girls are particularly highlighted in the context of climate change and development.*¹¹⁸⁴

¹¹⁸⁴ "ICPD Beyond 2014", UNECE, access at: http://www.unece.org/pau/icpd_beyond_2014.html

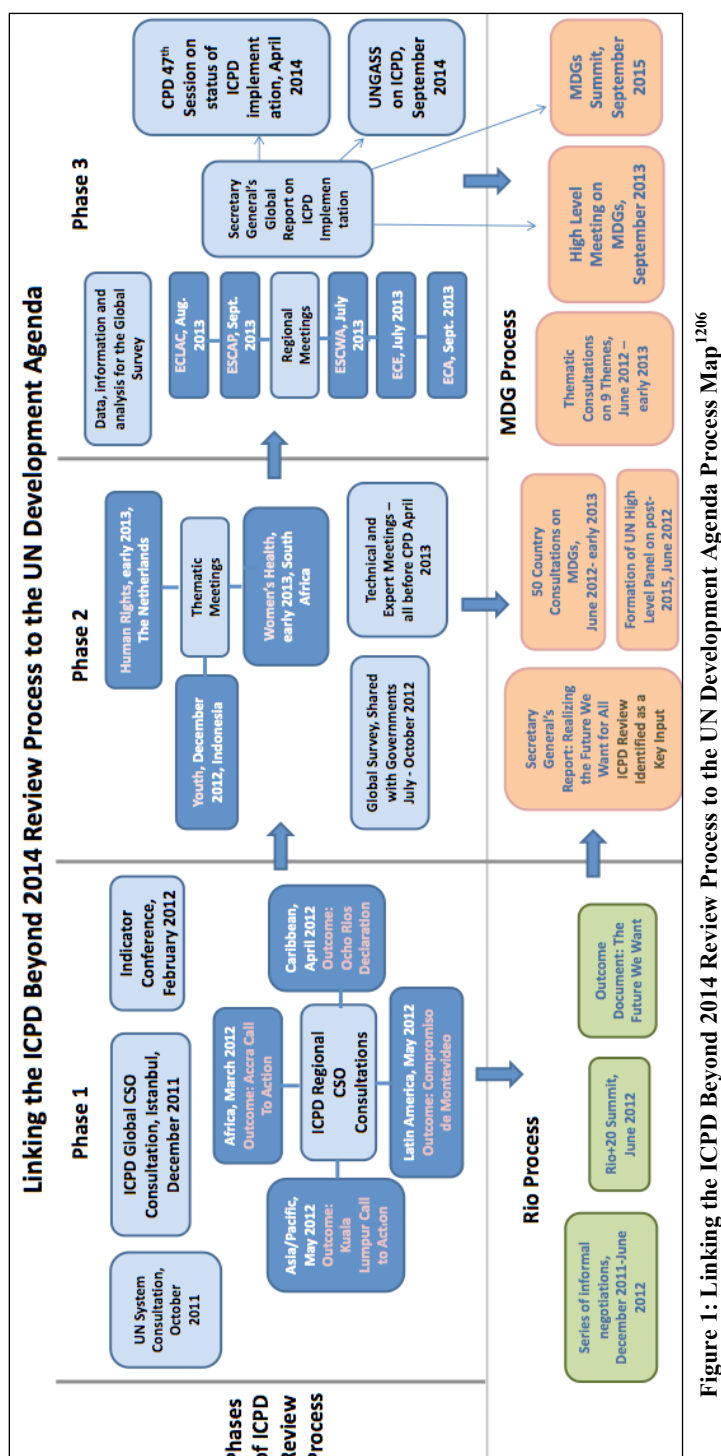


Figure 1: Linking the ICPD Beyond 2014 Review Process to the UN Development Agenda Process Map¹²⁰⁶

¹¹⁸⁵ "ICPD Beyond 2014 and the post-2015 UN development agenda." *ICPD*. N.p., n.d. Web. 27 July 2013. Access at: <http://icpdbeyond2014.org/about/view/14-icpd-beyond-2014-and-the-post-2015-development-agenda> (last accessed: 27 July 2013).

5.4. OECD-DAC

The Development Assistance Committee (DAC) of the Organization for the Economic Cooperation and Development (OECD) is among the most influential aid standard-setters. Developments in the OECD-DAC may, over time, have a major impact on current and future links between development aid and climate change.

Priority areas of support (which may allow for focus on the most vulnerable groups) of the Committee include: (1) supporting human rights and civil society organizations in “strengthen[ing] the voice of the most vulnerable and exclud[ing] and enlarg[ing] the political space for the participation of all members of society in exercising and defending their rights”; (2) promoting non-discrimination; (3) avoiding actions that may discriminate against particular groups;¹¹⁸⁶ (4) as well as applying human rights-based indicators and diagnostic tools.¹¹⁸⁷ Additionally, the DAC recommends the engagement of a wide range of stakeholders, particularly identifying vulnerable areas and sectors.

Historically, the OECD-DAC’s work on human rights began in 1993¹¹⁸⁸ and is concentrated in Governance Network’s Human Rights and Development Task Team. To date, the OECD-DAC has primarily focused on climate change adaptation within development aid. It was identified that national development plans, strategies and documents pay little attention to climate change and its impacts.¹¹⁸⁹ The 2006 OECD *Declaration on Integrating Climate Adaptation into Development Co-operation*¹¹⁹⁰, thus, commits member-states to “work to better integrate climate change adaptation in development planning and assistance” by mainstreaming climate adaptation within aid agencies and partner countries, establishing appropriate approaches for the integration of adaptation into development policies, and identify practical ways to reduce vulnerability to climate change and climate variability. The poor and those dependent on natural resources for their livelihoods are seen as particularly vulnerable.¹¹⁹¹

In 2009, the DAC adopted Policy Guidance on *Integrating Climate Change Adaptation into Development Co-Operation*¹¹⁹², where it notes that, “development choices made today will influence adaptive capacity and also determine future greenhouse gas emissions” with development activities both directly or indirectly being impacted by climate change. However, some projects can help reduce vulnerability and some may inadvertently increase it. Thus, partner countries are encouraged to assess climate risks and vulnerabilities, as well as include adaptation in development planning. Additionally, DAC’s *Policy Guidance* attempts to identify *entry points*, alongside the policy/project

¹¹⁸⁶ OECD DAC (2007). DAC Action-Oriented Policy Paper on Human Rights and Development.

¹¹⁸⁷ OECD DAC (2007). Human Rights and Aid Effectiveness: Key Actions to Improve Inter-linkages.

¹¹⁸⁸ OECD DAC (2007). DAC Action-Oriented Policy Paper on Human Rights and Development, p. 4.

¹¹⁸⁹ Agrawala, Shardul, and Ahsan Uddin Ahmed. *Bridge over troubled waters linking climate change and development*. Paris: Organisation for Economic Co-operation and Development, 2005.

¹¹⁹⁰ "Declaration on Integrating Climate Change Adaptation into Development Cooperation", Adopted by Development and Environment Ministers of OECD Member Countries on 4 April 2006, Meeting of the OECD Development Assistance Committee and Environment Policy Committee at Ministerial Level, OECD Headquarters, Paris, access at: <http://www.oecd.org/dac/environment-development/44229637.pdf> (last accessed: 27 July 2013).

¹¹⁹¹ OECD (2006). Declaration non Integration Climate Change Adaptation into Development Co-operation.

¹¹⁹² Integrating climate change adaptation into development co-operation policy guidance. (2009) Paris: OECD.

cycle, where adaptation could be incorporated. Here, the type of intervention is dependent upon the level of policy or project particularities, these include issues critical for vulnerable groups, such as land use planning, disaster response strategies or environmental impact assessments.¹¹⁹³ **The donor's role is to be particularly important in capacity building, supporting impact assessments, raising awareness and conducting high-level policy dialogues.**

Donor's actions (including actions responding to climate change), if ethnicity and gender are not taken into consideration, may result in a number of adverse effects. Also, scaling-up of aid should not decrease "government's willingness to tackle deep-rooted problems".¹¹⁹⁴ Focus should be given to "those groups whose rights are most often denied".¹¹⁹⁵ By adopting the *Action-Oriented Policy Paper on Human Rights and Development*, DAC members agreed to consider the inclusiveness of government strategies and their responsiveness to the perspectives of different interest groups and actors in a country – including the marginalized and most vulnerable in [the] assessment of ownership and alignment.¹¹⁹⁶ The DAC also advocates for a supportive political context, senior level commitment, accountability and communication, the strengthening the capacity of and incentives for staff, as well as the provision of new tools and procedures. Furthermore, developing partner ownership – one of the principles of 2005 Paris Declaration on Aid Effectiveness – is to be a democratic one, and thus, not limited to government „ownership“, but broadly encompassing whole societies and communities affected. **The „democratic ownership“ principle should be strengthened through participation, accountability, transparency and non-discrimination.**¹¹⁹⁷ However, these conditions are not clearly present in the work of most development agencies and organizations. Development actors are also inclined to avoid some controversies connected to human rights, often neglecting policies on inclusion and participation.¹¹⁹⁸

Gender in development is clearly linked to issues of poverty, democratic processes, human rights as well as environment.¹¹⁹⁹ Moreover, gender equality and women's empowerment are seen as crucial catalysts for the reduction of poverty and achievement of all Millennium Development Goals.¹²⁰⁰ Consequently, the DAC developed an approach to gender equality and women's empowerment in development co-operation following the 1995 Beijing Declaration and Platform for Action. The DAC Gender Equality (1995) statement and *Guidelines for Gender Equality and Women's Empowerment in Development Co-operation* (1999) called for a broader gender approach, moving away from "women in development" to making gender equality a strategic

¹¹⁹³ OECD DAC (2009). Policy Guidance on *Integrating Climate Change Adaptation into Development Co-operation*; OECD (2005) Bridge over troubled waters: Linking Climate Change and Development.

¹¹⁹⁴ OECD DAC (2007). DAC Action-Oriented Policy Paper on Human Rights and Development.

¹¹⁹⁵ OECD DAC (2007). Human Rights and Aid Effectiveness. DAC Update.

¹¹⁹⁶ Bosch Rahel (). Human Rights and Aid Effectiveness. *Strengthening Health Care Systems*.

¹¹⁹⁷ OECD DAC (2007). Human Rights and Aid Effectiveness: Key Actions to Improve Inter-Linkages.

¹¹⁹⁸ Cameron, Edward (2011). Development, climate change and human rights. From margins to the mainstream. Social Development Papers, Paper no 123. World Bank: Social Development, p. 20.

¹¹⁹⁹ OECD DAC (1999). Guidelines for Gender Equality and Women's Empowerment in Development Co-operation. See also OECD DAC (1998). DAC source book on concepts and approaches linked to gender equality.

¹²⁰⁰ OECD DAC (2008). DAC Guiding Principles for Aid Effectiveness, Gender Equality and Women's Empowerment.

development objective. Thus, rather than constituting a separate activity, gender equality is to be integrated into all policies, planning, monitoring, and evaluation. Gender equality guidelines were supplemented in 2008 in order to integrate them with aid effectiveness principles. Ownership and alignment are, thereby, regarded as broad based (thus, exceeding government ownership and engaging, e.g. women's organizations) and rely on a commonly accepted international framework (human/women's rights).¹²⁰¹

Surprisingly, DAC has not developed any policy documents (or specific guidelines) comprehensively approaching the problem of indigenous peoples in development. Existing statements are fragmented and isolated, arising rather from initiatives of DAC member states via reporting (especially Norway and Denmark), without establishing a coherent policy or a set of principles.¹²⁰² For instance, there has been some interest in indigenous education, but within a general context of cultural diversity rather than indigenous rights.¹²⁰³ Also, in overviews of donor approaches and best practices, including those dedicated to human rights,¹²⁰⁴ little attention is given to indigenous peoples. It appears that developments in the field of indigenous rights following the 2007 UN Declaration – including increased acknowledgment of the principle of FPIC or the use of traditional knowledge – are not being integrated - rather still issues of discrimination or access to justice are more pronounced in regard to indigenous peoples. **However, manifold DAC spheres of activity have potential to enhance the approach to climate change vulnerability of indigenous peoples, especially regarding participation, as is the case with the emphasis on domestic accountability, strengthening civil society and multi-stakeholder dialogue.**¹²⁰⁵ **The focus on links between human rights and poverty and work on guidelines for human rights assessments**¹²⁰⁶ **are important spaces where Finland could advocate for enhanced participation of indigenous peoples in development.** DAC-OECD Governance Network (GOVNET) is a cornerstone of these activities:

*The GOVNET work-stream on aid and domestic accountability aims to inform and shape donors' behaviour so that aid is provided in ways that maximise its positive impacts on domestic accountability in developing countries. It is designed to better understand how to make aid work for domestic accountability – through parliament, political parties, media, civil society organisations, audit institutions etc. – in developing countries.*¹²⁰⁷

An interesting process - from the perspective of this report – is the increased interlinkage within OECD and in general between climate financing and development in general. That is connected with so called “Busan Building Block on Climate Finance and

¹²⁰¹ OECD DAC (2008). DAC Guiding Principles for Aid Effectiveness, Gender Equality and Women's Empowerment.

¹²⁰² See, for instance, OECD DAC website at <http://www.oecd.org/dac/povertyreduction/48869500.pdf>.

¹²⁰³ Indigenous education in Education and Diversity project. DAC OECD website at <http://www.oecd.org/edu/country-studies/indigenouseducation-home.htm>.

¹²⁰⁴ See, e.g., OECD (2006) “Integrating Human Rights into Development. Donor approaches, experiences and challenges.”

¹²⁰⁵ See “Aid and domestic accountability” at the OECD DAC website <http://www.oecd.org/dac/governance-development/aidanddomesticaccountability.htm>.

¹²⁰⁶ See DAC website at <http://www.oecd.org/dac/governance-development/humanrightsanddevelopment.htm>

¹²⁰⁷ OECD DAC, “Improving support to domestic accountability”. Access at <http://www.oecd.org/dac/governance-development/44637318.pdf>.

Development Effectiveness”, which has been recently (November 2012) developed into “Partnership for Action on Climate Finance and Development Effectiveness” within the “Busan Partnership for Effective Development Co-operation”.¹²⁰⁸ The issue is of high importance as “there are concerns, particularly, of the part played by traditional aid structures and relationships in climate finance. Civil society groups raise concerns that it is virtually an extension of the aid system, in that it is a top-down, donor-driven system”.¹²⁰⁹

Most recently, the OECD adopted a recommendation on environmental information,¹²¹⁰ aimed at improving the reporting, collection, and dissemination of environmental information held by public bodies. This recommendation reflects the principles of the 1998 Aarhus Convention, but seeks to broaden their application to all OECD member states.

5.5. UNDP

The United Nations Development Programme (UNDP) plays a particularly prominent role in development cooperation, especially with regard to where “[p]rogrammes and projects should focus on building regional, national and local networks for exchange of experiences and information as well as for policy lobbying.”¹²¹¹ It sees itself as a dialogue broker, involving states, as well as civil society, including indigenous peoples and their organizations.¹²¹² Although UNDP’s documents are not specifically directed at aid donors, it has a substantial and long-term impact – especially in affecting change pertaining to paradigms and approaches – on how development practice is conducted.

5.5.1. Women and UNDP

To date, the UNDP may be perceived as a forerunner of standard setting, with an eye toward examining the gender-development-climate change nexus. The UNDP recommends: (1) the integration of gender perspectives and gender equality into mitigation, adaptation and disaster reduction (and thus, also humanitarian aid and disaster relief); (2) raising women’s adaptive capacity; (3) gender-sensitive planning, as it is

¹²⁰⁸ See Development Assistance Committee’s website at <http://www.oecd.org/dac/environment-development/busanbuildingblockbbbpactonclimatefinanceanddevelopmenteffectiveness.htm>.

¹²⁰⁹ Plus another good quote from the same source: “Climate funds under the UNFCCC have become a collection of small vertical funds suffering chronic under funding. These multiple funding channels make climate finance fragmented. Globally, there is no coherence and no oversight. This makes it complicated at the level of recipient countries. Multiple funders come to countries with pre-set objectives, and developing countries struggle to integrate external climate funding with their own climate and development strategies.” <http://www.climatefinance-developmenteffectiveness.org/images/pdf/CSOs%20and%20Building%20Block%20on%20CF.pdf>.

¹²¹⁰ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 64.

¹²¹¹ UNDP (2001) “UNDP and Indigenous Peoples: A Practice Note on Engagement”, 5, access at: <http://europeandcis.undp.org/files/uploads/Poverty%20reduction/UNDP%20and%20indigenous%20peoples.pdf> (last accessed: 27 July 2012).

¹²¹² UNDP (2001) “UNDP and Indigenous Peoples: A Practice Note on Engagement”, access at: <http://europeandcis.undp.org/files/uploads/Poverty%20reduction/UNDP%20and%20indigenous%20peoples.pdf> (last accessed: 27 July 2012).

needed to help women develop sustainable and resilient livelihoods; (4) mitigation (including REDD+) and adaptation, which are to promote poverty reduction, gender equality, as well as women's empowerment and participation; (5) climate change disaggregated data (e.g. desertification or deforestation) that analysed from a gender perspective and based on gender-specific indicators; (6) the inclusion of traditional knowledge in planning; (7) equal access to information; (8) gender expertise is to be included throughout the project cycle and that women's perspective is always included; (9) budget lines that are analysed from a gender perspective; (10) addressing gender differences with regard to coping with climate change adaptation and mitigation capabilities; (11) setting targets for women's participation; (12) attuning adaptation planning and financing to the needs and interests of both women and men; (13) the elimination of legal discrimination related to ownership and access to assets; (14) and, lastly, that climate finance should integrate gender-sensitive tools and procedures and decrease gender biases.¹²¹³

5.5.2. Indigenous Peoples and UNDP

The UNDP has developed a substantial approach to indigenous peoples in development. Numerous issues are underlined, including: poverty reduction, human rights, democratic governance, recognition of indigenous traditional knowledge, self-determination, non-discrimination, land ownership, support for sustainable indigenous communities, as well as impacts of globalisation. The extra-vulnerability of indigenous women in crisis situations is also emphasised. Particular attention is given to their "participation and representation at all levels in decision-making processes, especially those that may affect their human, developmental and environmental rights."¹²¹⁴ Consultations are to keep organizational (local and regional indigenous peoples' organizations), gender and generational balance and "use culturally appropriate methods that allow indigenous peoples to express their views and preferences." Engagement with indigenous peoples is seen as a political act and need of broad partnership, including the government, is pronounced. There are, nevertheless, shortcomings. For instance in the 2007 report on capacity development, indigenous peoples or their organizations are not mentioned.

5.6. Financing Development and the World Bank

The World Bank Group (WBG) comprises five institutions: The International Bank for Reconstruction and Development (World Bank), which lends to governments of middle-income and creditworthy low-income countries, the International Development Association (IDA), which provides loans and grants to the poorest countries, the

¹²¹³ UNDP (2012). Overview of linkages between gender and climate change. (Zerisenay Habtezion) Gender and Climate Change Africa. Policy brief 1; UNDP (2012). Gender and adaptation. (Zerisenay Habtezion) Gender and Climate Change Africa. Policy brief 2. For more on UNDP approach and assessment of gender equality in development and climate change throughout various policy fields, see UNDP (2012). Powerful Synergies. Gender Equality, Economic Development and Environmental Sustainability.

¹²¹⁴ UNDP (2001) "UNDP and Indigenous Peoples: A Practice Note on Engagement", 4, access at: <http://europeandcis.undp.org/files/uploads/Poverty%20reduction/UNDP%20and%20indigenous%20peoples.pdf> (last accessed: 27 July 2012).

International Finance Corporation (IFC), which focuses on private sector and advises businesses and governments, Multilateral Investment Guarantee Agency and the International Centre for Settlement of Investment Disputes. Here, we are interested in the role of the WBG institutions as potential standard-setters in development assistance, promoting – potentially – best practices and policy innovation in the field of development aid and, more broadly, international development. This role of the WBG is visible in donor policy documents, where the practices and guidelines of the World Bank are seen as a benchmark.

The integration of human rights into the work of WB has been met with resistance, even though it has claimed that the basic goals and values of the human rights framework already constitute the core of its mission. Human rights-relevant safeguard policies (mainly focused on “do-no-harm” principle) were put in place to avoid adverse impacts, including particularly vulnerable groups and issues of access to land, resettlement, rights to food, and water.¹²¹⁵

However, new forms of WB’s activity are often not covered by existing safeguards. This includes climate finance. There is, thus, a risk of discrimination against the most vulnerable groups, including the violation of their rights to food, water, and health (e.g. biofuel projects, irrigation or deforestation reduction). Lastly, the WB has only taken first steps toward integrating human rights into its climate actions, primarily by organizing workshops where issues of gender equity and indigenous issues, connected to climate projects, were highlighted.¹²¹⁶

The Bank’s focus has primarily been on climate mitigation, rather than adaptation policies.¹²¹⁷ However, the issue of climate change and adaptation is becoming increasingly important in WB projects, both in the financial and development space. With regard to climate change, the World Bank is expected to implement Agenda 21 and incorporate the principles of the Rio Declaration. In practice, it has been forced to account for the needs of sustainable development, environmental protection, and human rights concerns in its lending decisions.¹²¹⁸ Moreover, despite structural changes¹²¹⁹ that were undertaken via various reforms in the 1990s, in order to fund ecologically sound development, a study by Birnie and Boyle has concluded that the Bank’s “approach to incorporating environmental concerns remains inadequate, and has demonstrated that environmental sustainability cannot be added on [to] the ‘business-as-usual’ approach to development.”¹²²⁰ **However, the WB has only taken first steps towards integrating human rights into its climate actions,** primarily by organizing a workshop where issues

¹²¹⁵ Herbertson, Kirk, Thompson, Kim and Robert Goodland (2010). A roadmap for integrating human rights into the world bank group. World Resource Institute Report.

¹²¹⁶ Ibid.

¹²¹⁷ Agrawal, Arun. (2008) "The role of local institutions in adaptation to climate change." Washington DC: World Bank, 45.

¹²¹⁸ World Bank, Articles of Agreement, Article V (10).

¹²¹⁹ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 60.

¹²²⁰ Birnie, Patricia W., and Alan E. Boyle. *International law and the environment*. (Second Edition ed.) (2002), Oxford: Clarendon Press, 60; Fox and Brown (eds.), *The Struggle for Accountability: The World Bank, NGOs and Grassroots Movements* (Cambridge, Mass., 1998), 9, citing a WWF assessment.

of gender equity and indigenous issues connected with climate projects were highlighted.¹²²¹

Since 2007, the WB has been implementing the Gender Action Plan on “Gender equality as smart economics” (currently in transition to a broader gender mainstreaming), focused on supporting women is economic empowerment, entrepreneurship and promoting the mainstreaming of equality and women’s status in WB projects. Although accounting for “socio-economic conditions” the ongoing and future impacts of climate change are not highlighted.¹²²² Notably, Finland expressed strong support to the implementation of the World Bank’s Gender Action Plan.¹²²³

An example of the World Bank’s knowledge-building instrument, which has potential to influence donor policies, is the 2012 World Development Report on Gender Equality and Development Report. Climate change is mentioned in the report as a salient risk factor from a gender perspective, with women being particularly affected, but without clear links to any policy or action.¹²²⁴

The World Bank recognizes indigenous peoples’ “close attachment to ancestral territories and natural resources in these areas”, in addition to their language, as a key element in their definition.¹²²⁵ Interference with their land may lead to communities’ inability to properly enjoy their human rights.¹²²⁶ However, current WBG safeguard standards and policies on indigenous peoples are inconsistent with the principles and rights embodied in the contemporary normative framework in relation to FPIC.¹²²⁷ The Bank’s Operational Policy 4.10 substitutes “free, prior and informed consent (FPIC)” with “free, prior informed consultation (FPICon)” (for more information see Section 2.5.4. on FPIC). In doing so it removes the requirement for indigenous peoples’ consent, replacing it with an ambiguous objective of achieving broad community support.¹²²⁸ The ambiguity of the Bank’s determination of ‘broad community support’ has been raised by its own Compliance Advisor/Ombudsman.¹²²⁹

¹²²¹ Herbertson, Kirk, Thompson, Kim and Robert Goodland (2010). A roadmap for integrating human rights into the world bank group. World Resource Institute Report.

¹²²² World Bank (Gender and Development) (2010). Applying Gender Action Plan Lessons: A Three-Year Road Map for Gender Mainstreaming (2011- 2013).

¹²²³ Ministry for Foreign Affairs of Finland (14/2009) "Government Report to Parliament on the Human Rights Policy of Finland", 60.

¹²²⁴ World Bank (2012), Gender Equality and Development. World Development Report, p. 86.

¹²²⁵ Leena Heinämäki: The Right to Be a Part of Nature: Indigenous Peoples and the Environment. Rovaniemi: Lapin yliopistokustannus 2010. Acta Universitatis Lapponiensis 180, 3 and 28.

¹²²⁶ Ibid 180, 35.

¹²²⁷ Doyle, Cathal, ‘Free, Prior and Informed Consent (FPIC) – a universal norm and framework for consultation and benefit sharing in relation to indigenous peoples and the extractive sector. Paper prepared for OHCHR Workshop on Extractive Industries, Indigenous Peoples and Human Rights, Moscow, 3rd-4th December 2008, at 7.

¹²²⁸ MacKay, Fergus, ‘The Draft World Bank Operational Policy 4.10 on Indigenous Peoples Progress or more of the same?, 22 (Spring 2005) Arizona Journal of International and Comparative Law, WHICH NUMBER at 81.

¹²²⁹ Office of the Compliance Advisor/Ombudsman (CAO) IFC and MIGA, World Bank Group Advisory Note ‘IFC’s Policy and Performance Standards on Social and Environmental Sustainability and Disclosure Policy, Commentary on IFC’s Progress Report on the First 18 Months of Application’, December 17, 2007, at 3, access at: <http://www.cao-ombudsman.org/howwework/advisor/documents/CAOpolicystatementIFCperformancestandards121707.pdf>.

It is important that vulnerable and marginalized groups are also included in more high-level and broader issues concerning development, such as financing for development or trade, rather than only local project modalities and safeguards. Discussions on financial questions are a good example of areas that directly and indirectly affect development action and from which vulnerable groups are often excluded. **An entry point, where international standards for development work may be elaborated in, is the UN process on *Financing for Development*, which constitutes a follow-up to Monterey 2002 and Doha 2008 conferences.** The process focusses primarily on financial flows, debt burden, aid flows, or trade and development. The process is of critical importance for the general structure of development funding. The General Assembly is currently preparing a resolution, a draft of which does not refer to climate change, climate finance, or enhancing the inclusion of vulnerable groups.¹²³⁰ However, the process encourages the engagement of “all relevant stakeholders”, which could create a space for the participation of civil society, including women’s and indigenous organizations. Multi-stakeholder dialogues were conducted on such topics as regional cooperation, an inclusive financial sector, or the nexus of sovereign debt and sustainable development. Seminars organized under *Financing for Development* framework touch upon such issues as taxation of extractive industries¹²³¹ or financing for Millennium Development Goals, which are relevant to this report.¹²³²

The General Assembly, in its recent Resolution, invites Member States to financially support the inclusiveness of the Financing for Development process, which also refers to the participation of civil society representatives in relevant seminars and workshops.¹²³³ One example of such involvement is “Financing for Development High-Level Dialogue Civil Society Forum”, organized in November 2012 with participation of, inter alia, women’s organizations.¹²³⁴ In addition (and with relevance to this report), the UN Financing for Development process has taken up the results of the Rio+20 Conference and focuses on financing for sustainable development. The process is also closely connected to the work on developing post-2015 development agenda, where climate change impacts will need to be taken into account to a much greater extent. For example, the Economic and Social Council recently (April 2013) held a meeting with Bretton Woods institutions, the WTO, and the UN Conference on Trade and Development.

¹²³⁰ UN General Assembly (2012). Sixty-seventh session Second Committee. Follow-up to and implementation of the outcome of the 2002 International Conference on Financing for Development.

and the 2008 Review Conference: draft resolution. Follow-up to the International Conference on Financing for Development. See also Economic and Social Council, Resolution access at: http://www.un.org/ga/search/view_doc.asp?symbol=E/RES/2012/31&Lang=E.

¹²³¹ Special Events on Financing for Development, access at: <http://www.un.org/esa/ffd/events/special.htm> (last accessed: 27 July 2013).

¹²³² See, Financing for Development website at <http://www.un.org/esa/ffd/msc/ffdo.htm>.

¹²³³ UN General Assembly (2012). Sixty-seventh session Second Committee. Follow-up to and implementation of the outcome of the 2002 International Conference on Financing for Development and the 2008 Review Conference: draft resolution. Follow-up to the International Conference on Financing for Development. See also Economic and Social Council, Resolution. Access at: http://www.un.org/ga/search/view_doc.asp?symbol=E/RES/2012/31&Lang=E, Financial support for making the process inclusive – for poorest states and civil society – is organized by the Trust Fund established for that purpose.

¹²³⁴ See Draft Programme at <http://www.un.org/esa/ffd/hld/HLD2011/DraftProgrammeCSOForum.pdf>.

5.7. The Post-2015 Development Agenda: Overview of The Current State

The process of designing the post-2015 development agenda, which is to replace the MDGs, is ongoing. Reaching its final stages, it must be underlined that the post-2015 agenda will require the identification of a set of well-defined goals – founded on a platform of human rights, good governance and equality – as well as a greater focus on the development process, as opposed to emphasis only on results. While the agenda is still taking shape, various aspects – relevant to the human rights of vulnerable groups in the context of climate change – can be seen as its relatively certain components. These include:

a) The new framework will incorporate **sustainable development** and its three dimensions (environmental, social and economic development) to a much greater extent. This will be complemented with attention to peace and security. Ideally, future development should be holistic and comprehensive, with the post-2015 agenda and SDGs fully integrated.

b) The moderate success of the MDGs encourage the development of a **new set of goals**. Based on the experience of MDGs, the post-2015 development goals will be designed in such a way that they are: engaging; easy-to-communicate; few in number; globally applicable; ambitious yet feasible and realistic; measurable, where indicators are identifiable and data available; and co-constitutive with sustainable development goals.¹²³⁵ Nonetheless, difficulties include finding a set of reliable and relevant indicators.

c) **Limitations and shortcomings associated with the MDGs** are to be avoided, especially their “one size fits all” structure, as well as insufficient attention to inequality in development (including the economic and social dimensions of development) and to address governance problems. The implementation of the post-2015 agenda will be based on national and local targets where the focus will be placed on the “ends”, while the process of achieving post-2015 goals must also receive due attention.¹²³⁶ Specific enablers of development (e.g., access to justice, greater participation of women, lower corruption) could be identified.¹²³⁷

d) In this context, a **human rights-based approach** will play a vital role in conceptualizing a new agenda. Rights, in the context of climate change mitigation, adaptation and natural disasters include the right to food; the right to an appropriate standard of living; sexual and reproductive rights; as well as the empowerment of women.¹²³⁸ Taking human rights as a basis for action entails

¹²³⁵ See, e.g., Carin and Bate Eamer 2013; Vandermoortele 2012; UNTT 2012; HLP 2013.

¹²³⁶ See, e.g., Carin, Barry and Nicole Bates-Eamer (2013, May). “The Millennium Development Goals and post-2015: Squaring the Circle”. CIGI Papers No. 17. Centre For International Governance Innovation. Available at <http://www.cigionline.org/publications/2013/5/millennium-development-goals-and-post-2015-squaring-circle> (June 2, 20143); UNTT 2012.

¹²³⁷ IDF 2013.

¹²³⁸ Carin and Bate Eamer 2013; International Diabetes Federation (IDF) (2013). IDF Submission – Indigenous Peoples and Inequalities in the Post-2015 Development Agenda; Vandermoortele 2012; UNTT 2012; High

designing new goals and processes for implementing and monitoring their progress, as well as clearer than before allocation of accountability.

e) Although issues of **good governance, inequality, and gender**, may be developed into specific goals (e.g. a separate equality goal), their integration throughout the post-2015 framework should and likely will be a crosscutting issue of the new development agenda. This will probably include a pledge to just and inclusive growth and economic systems, especially with regard to women.¹²³⁹ For instance, discrimination and hindered access to quality education still obstructs equitable and sustainable social and economic development for women and indigenous peoples.¹²⁴⁰

f) As **climate change** and disaster-related risks and challenges become increasingly apparent, such concerns will be integrated into the post-2015 framework with a focus on community resilience.¹²⁴¹ The high-level panel has stated that "climate change will determine whether we can deliver on our ambitions for sustainable development", pointing to unsustainable production and consumption patterns, and the need for transformative shifts.¹²⁴²

g) More broadly than in the case of the MDGs **participation** – the design, implementation, monitoring and eventual evaluation of the global progress – will constitute a crucial element of the new development agenda, based on a bottom-up approach.¹²⁴³ National governments, the private sector, as well as civil society are currently taking part in numerous consultation processes, aiming to prevent repeating shortcomings of the MDGs. Broad consultation efforts that reach out to various sectors of civil society are ongoing.¹²⁴⁴ The donor-perspective, prevalent in earlier discussion on development, as well as an academic viewpoint will cease to be the dominant discourse. Ideally, the discussion will not be limited to developing countries (targets should also be applicable to the Global North) and issues of global inequality and disparity should be highlighted.¹²⁴⁵

While the possibility to influence the abovementioned parameters is limited, the ability to shape the details of the post-2015 agenda has the potential to address

Level Task Force for International Conference on Population and Development (HLTF ICPD) (2012) . HLTF ICPD is co-chaired by Tarja Halonen.

¹²³⁹ HLP 2013. IDF 2013; EU (2013). "European Report on Development". Available at http://www.erd-report.eu/erd/report_2012/documents/FullReportEN.pdf; Vandermoortele 2012; HLP 2013. HLP 2013; UN Women (2012), "A Stand-alone Goal on Achieving Gender Equality, Women's Rights and Women's Empowerment: Imperatives and Key Components in the Context of the post-2015 Framework and Sustainable Development Goals.

¹²⁴⁰ HLTF ICPD 2012.

¹²⁴¹ See, e.g., EU (2013). "European Report on Development"; Carin and Bate Eamer 2013; UNTT 2012.

¹²⁴² HLP 2013.

¹²⁴³ Vandermoortele, Jan (2012, January), „Advancing the UN development agenda post-2015: some practical suggestions" Report submitted to the UN Task Force regarding the post-2015 framework for development.

¹²⁴⁴ IISD 2013; UNTT 2012.

¹²⁴⁵ Vandermoortele 2012; UNTT 2012.

some of the key challenges faced by vulnerable groups and to include them in existing and new processes. This is currently taking place via various dedicated groups within the UN, including: a UN System Task Team on the Post-2015 UN Development Agenda (UNTT) composed of representatives of various UN agencies and organizations;¹²⁴⁶ a UN High-level Panel of Eminent Persons on the Post-2015 Development Agenda (HLP); and a Special Advisor on Post-2015 Development Planning, a series of national and global thematic consultations. The HLP has recently issued its report.¹²⁴⁷ The Open Working Group on Sustainable Development Goals will play a particularly crucial role in setting the new agenda as the post-2015 global approach to development is to be unified with the outcomes of the Rio+20 Conference on Sustainable Development. While the final adoption of the new development agenda is not expected until the beginning of 2015, critical decisions are expected beforehand. A UN General Assembly Special Event on the MDGs, to be held in September 2013, will serve as a forum for discussing the direction of the post-2015 framework. Numerous events, including high level dialogues (e.g. on international migration and development, on disability and development, etc.), are expected to take place over the coming two years.¹²⁴⁸

To date, Finland has strongly supported an emphasis on human rights, inequality, and the enhancement of the status of women in the post-2015 process.¹²⁴⁹ At an MFA-organized meeting dedicated to the post-2015 agenda, Anne Pönni of World Vision Finland encouraged Finland to shape measurable and universal goals, to focus on poverty reduction; the advancement of human rights; the eradication of inequality; and a provision for better opportunities for those who are vulnerable.¹²⁵⁰

5.8. Recommendations for Development and Aid

5.8.1. Finnish Development Aid

a) An Indigenous Focus for Finland's Development Cooperation & Aid Policy Statement. A major (and perhaps the most visible) shortcoming of Finnish aid policy is the lack of a (clear) indigenous focus, surprising when considering the domestic Sami case and focused support and policies developed by Finland's Nordic peers – Denmark and Norway.¹²⁵¹ The development of clear policy statements would: underline existing Finnish

¹²⁴⁶ The UN System Task Team (UNTT) published its first report, which is to serve as a reference for the development of post-2015 agenda in June 2012, see UN System Task Team on the Post-2015 UN Development Agenda (UNTT) (2012, June). "Realizing the Future We Want for All". Report to the Secretary-General.

¹²⁴⁷ High-Level Panel of Eminent Persons on the Post-2015 Development Agenda (HLP) (2013, May). "A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development".

¹²⁴⁸ See post2015.org website as well as IISD, Post-2015 Development Agenda Bulletin, Vol. 208 (2013) and other 2013 volumes; Vandermoortele 2012.

¹²⁴⁹ Ministry of Foreign Affairs, "Finland is strongly committed to formulating the Post-2015 development agenda." Access at: <http://formin.finland.fi/public/default.aspx?contentid=276673&contentlan=2&culture=en-US>.

¹²⁵⁰ Ibid.

¹²⁵¹ See, e.g., Norwegian Ministry of Foreign Affairs, "Norway's Efforts to Strengthen Support for Indigenous Peoples in Development Cooperation. A human rights-based approach," Guidelines (2004); DANIDA, "Strategy for Danish Support to Indigenous Peoples", Ministry of Foreign Affairs (2004); DANIDA, "Tool Kit. Best practices for including indigenous peoples in Sector Programme support" (2004).

efforts in development cooperation with regard to indigenous peoples; strengthen Finland's position and role as a promoter of indigenous rights and best practices in development; strengthening the human rights-based approach as the foundation of Finnish development cooperation; and ensuring that future projects and policies are conducive to indigenous communities. **Closer cooperation with Finnish Sami organizations, institutions and experts, as in Norway,¹²⁵² may be of an advantage both for Finnish development aid and Finland's international development advocacy.** Learning from Denmark and Norway (perhaps even Austria, The Netherlands and Spain) may be particularly useful.¹²⁵³ The development policy for indigenous peoples should be founded on a human rights-based approach. This is, for example, openly stated in Norway's development aid.

b) Approaching Climate Change from a Human Rights Perspective. As noted earlier, the right to food, the right to water, and the right to a decent standard of living are among the basic social and economic rights. Climate change impacts indigenous peoples' ecosystems, local food production and, thus, indigenous food security and sovereignty (with rising pressures on land due to various development).¹²⁵⁴ **Finnish development aid should approach these rising problems from a human rights perspective and support the transmission of traditional knowledge, crucial for both food security and indigenous cultural development.** FPIC, land rights, and the UN CBD should be regarded as important instruments in maintaining indigenous food security. Moreover, assistance programmes may support the building of partnerships and a mutual understanding between indigenous peoples and farmers.¹²⁵⁵

A HRBA should be implemented throughout the spectrum of policies that have a bearing on development, not only in direct actions under development aid. It should include PYM (local cooperation funds) and IKI (institutional cooperation instruments) projects implemented by the MFA and Finnish Embassies. However, the first step should be the clear definition of what a HRBA is and how it is to be specifically implemented.¹²⁵⁶ Critical components of such a definition should be: an equal focus on process, as well as

¹²⁵² For the last decade, the Forum for Development Cooperation with Indigenous Peoples had been active at the University of Tromsø, with the support from the Norwegian Development Aid Agency (NORAD), although with various success in influencing the actual Norwegian policy. That included organizing of annual conferences bringing together the Sami, indigenous peoples from the Global South, scholars as well as Norwegian aid policy-makers. The Norwegian Sami Parliament has been consulted on some developments regarding Norwegian development cooperation with indigenous peoples. The Norwegian and Swedish sections of the Sami Council were engaged in running own projects based on the EU and NORAD funding (ADD SOME REFs).

¹²⁵³ Although, noticeably, Norwegian development aid for indigenous peoples has been criticized in a report by Norwegian Institute for Foreign Affairs NUPI: Øverland, Indra and Anita Haslie (2006). "Norges bistand til urfolk. En realitetsorientering". NUPI-notat 708.

¹²⁵⁴ See, e.g. Dobermann, Achim and Rebecca Nelson (2013, May). "Opportunities and Solutions for Sustainable Food Production" Background Research Paper submitted to the High Level Panel on the Post-2015 Development Agenda; Hanson, Criag (2013, May), "Food Security, Inclusive Growth, Sustainability and the Post-2015 Development Agenda", Background Research Paper submitted to the High Level Panel on the post-2015 Development Agenda.

¹²⁵⁵ UNICEF and SPFI 2012/2013.

¹²⁵⁶ Input from a stakeholders: KEHYS (Finnish DNGO Platform for the EU)

outcome, the fulfilment of human rights (as incarnating the idea of good life and capability) as an ultimate goal of development, and a clear accountability framework.¹²⁵⁷

In the long-term perspective, policy coherence requires actions that raise human rights standards within Finland, such as the ratification of the ILO Convention No. 169 and UN Convention on the Rights of Persons with Disabilities.¹²⁵⁸

c) Promoting the Participation & Cooperation of Transnational Indigenous Peoples.

Development projects should support the cooperation of indigenous peoples divided by state borders, and their participation in regional and global processes and fora. Human rights instruments provide for the right of such peoples to maintain contacts and cooperation across borders.¹²⁵⁹ Current negotiations on the Nordic Sami Convention,¹²⁶⁰ notwithstanding their future outcome, may already be used as a best practice in approaching the rights of indigenous peoples divided by state borders. **Finland should support transnational indigenous peoples by funding cross-border activities that encourage (in dialogue with development partners) the creation of conditions for indigenous peoples, divided by state borders, to maintain contact and undertake joint activities (in line with UNDRIP, Art. 36), as well as by promoting the experience of Sami transboundary institutions.**

d) Indigenous Women and Girls in Development Cooperation. Finland should utilize its reputation, experience, and knowledge in promoting gender equality toward enhancing equality, non-discrimination, and the inclusive development of indigenous women and girls. Specific projects should include issues of education beyond primary education, reproductive and sexual health, the displacement of indigenous women and its associated problems. A focus should also be placed on structural barriers, as opposed to merely responding to a particular situation. Health issues must be addressed from a holistic perspective, as opposed to a disease-by-disease approach. The role of indigenous women in food production, the transmission of traditional knowledge, and education should be properly understood and programmes/projects dedicated to women's empowerment should build on the indispensable character of women's work for survival of indigenous communities and cultures. Women must be regarded as experts, leaders and stakeholders in all development processes.¹²⁶¹ Problems of violence, abuse, and discrimination from both inside and outside the community should be accounted for across all projects and programmes. Good examples include the experience of Norwegian development aid (and guidelines prepared by the Norwegian Aid Agency), which support indigenous women's participation in community decision-making in cases where women have traditionally been

¹²⁵⁷ Uvin 2004.

¹²⁵⁸ Input from a stakeholder: KEHYS (Finnish DNGO Platform for the EU)

¹²⁵⁹ Including art. 36 of the UN Declaration on the Rights of Indigenous Peoples, and art 32 of the ILO Convention no. 169 on Indigenous and Tribal Peoples in Independent Countries; see Koivurova, Timo (2010). Sovereign States and Self-Determining Peoples: Carving Out a Place for Transnational Indigenous Peoples in a World of Sovereign States, in *International Community Law Review* 12: 191–212.

¹²⁶⁰ Koivurova (2008), "Draft for a Nordic Saami Convention: Nations Working Together" in *International Community Law Review* 10: 279–293; Banks, Nigel and Timo Koivurova (2013), *The Proposed Nordic Saami Convention: national and International Dimensions of Indigenous Property Rights*. Hart Publishing 2013.

¹²⁶¹ UNICEF and SPFH 2012/2013; Bradshaw et al. 2013.

excluded from long-term dialogues with communities, as well as the capacity building of women.¹²⁶²

e) Using & Sharing Best Participatory Practices. Finland has played a role in strengthening indigenous peoples' participation; this includes the Akwe-Kon guidelines regarding art. 8(j) of the UN CBD, especially with regard to the Hammastunturi pilot project (See Section 2.5.4. The Free, Prior and Informed Consent (FPIC) of Indigenous Peoples), as well as with regard to the general participation of indigenous populations in decision-making (e.g. via the Sami Parliament). This experience and gained knowledge should be shared and promoted via development cooperation, with partners in the Global South and through dialogues accompanying development partnerships.

There is an ongoing need to strengthen the administrative, technical, and political capacity of indigenous organizations and networks to facilitate their participation at local, regional, national and international levels – areas where indigenous rights and human rights are relevant.¹²⁶³ Support for indigenous organizations should be allowed in countries with higher income (and thus, normally not eligible for development funding) if the indigenous population there is marginalized, as is the case of Danish development aid.

Finnish ODA could benefit from the existing experiences of other Nordic donor countries, especially with regard to integrating collective rights to land and resources. The Danish development agency, for example, advises that traditional managements systems be taken into consideration when implementing projects (e.g. in the case of projects on poverty reduction and nature conservation in East Africa, or shifting cultivation in Asia).¹²⁶⁴ Organizations, such as the Finnish Association of the UN, have already organized peer-to-peer workshops¹²⁶⁵ on the Arctic and issues relevant to Tanzanians (e.g. gender rights, vulnerable groups, disabled persons) between East Africa and Finland, which included the participation of the World Federation of United Nations Associations' Program Director, Irene Martinetti.¹²⁶⁶

Finland, in the design of its support for indigenous organizations, should utilize the experiences of the Norwegian Programme for Indigenous Peoples,¹²⁶⁷ which has supported grassroots indigenous organizations, especially in Latin

¹²⁶² Norwegian Ministry of Foreign Affairs, "Norway's Efforts to Strengthen Support for Indigenous Peoples in Development Cooperation. A human rights-based approach," Guidelines (2004).

¹²⁶³ See, e.g. DANIDA, "Strategy for Danish Support to Indigenous Peoples", Ministry of Foreign Affairs (2004).

¹²⁶⁴ DANIDA, "Tool Kit. Best practices for including indigenous peoples in Sector Programme support" (2004).

¹²⁶⁵ Effective Advocacy in UN Processes Workshop – Tanzania. Access at: <http://www.wfuna.org/news/effective-advocacy-in-un-processes-workshop>; These workshops also include creative Barefoot Workshops. Access at: http://www.barefootworkshops.org/alumni_gallery/2009/MS101-2009-2/MS101-2009_CreativeCrossroads.html.

¹²⁶⁶ World Federation of the United Nations Association, access at: <http://www.wfuna.org>; United Nations Sustainable Development Knowledge Platform. Sustainable development goals. Access at: <http://sustainabledevelopment.un.org/index.php?menu=1300>.

¹²⁶⁷ Stepien, Adam (2011) "Arctic Indigenous Peoples influencing Danish and Norwegian Development Cooperation with Indigenous Peoples in the Global South. Ideas and actors." Polar Law Yearbook 3 (2011): 297-342; Daudelin, Jean et al. (1998). "Evaluation of the Norwegian Program for Indigenous Peoples". The North-South Institute.

America, for over 20 years. Moreover, it should continue to support workshops similar to those undertaken by the Finnish Association of the UN, outlined above, via long-term commitments. The success of the programme was built on allowing cooperating organizations independence and accepting a fairly high percentage of unsuccessful projects, which allowed supported organizations to develop on their own terms and with their own priorities, and provided funding for small organizations that would not have qualified for funding in other programmes due to a high risk of failure, but which proved to be viable and active indigenous NGOs in the long-run (e.g., AIDSESP: Asociacion Interctnica de Desarrollo de la Selva Peruana from Peru or Instituto Socioambiental from Brasil). Such an approach to development funding is particularly important in capacity-building efforts supporting participation of indigenous actors.

f) Indigenous Peoples, ICT, and Development Cooperation. Information and communication technologies play an increasing role in the development and operations of civil society, including developing countries' poorest social groups. **Finnish development policy should support indigenous and networks' ICT capacities, including human resources, education, technical support, experience-sharing, adopting ways to combine modern ICT with cultural practices for education, advocacy and the restoration of traditional knowledge.** As one of the most advanced countries in terms of information and communication technology, Finland should take a leading role. Moreover, the participation of indigenous peoples in international fora dedicated to information technology and intellectual property rights, such as at the ISO and the World Intellectual Property Organization should be supported, in order to bring specific indigenous perspectives to light (e.g. referring to collective intellectual property rights, rights to genetic resources or standards for public access or information).¹²⁶⁸

5.8.2. Developing OECD-DAC guidelines on Development Cooperation with Indigenous Peoples

To date, the Development Assistance Committee has not established guidelines relating to indigenous peoples in development. This is surprising as numerous DAC member states (e.g. Denmark, Germany, the Netherlands, Norway) have either issued best practice strategies or inventories. Moreover, recent developments in the field of indigenous rights (e.g. the UNDRIP; FPIC; the application of human rights instruments) should be integrated into (main) donors' policies and strategies. Considering the influence that DAC guidelines and peer-reviews have on aid practices, such guiding documents may visibly improve main donors' policies with regard to indigenous peoples.

The first step in establishing a policy document should be an inventory of best practices by DAC members. Guidelines should be accompanied by indigenous development markers and the inclusion of indigenous concerns into DAC review processes. Issues requiring particular attention with regard to climate change vulnerability include: FPIC; access to, control and ownership of land and resources; rights and the situation of the most marginalized members of indigenous communities, especially women, youth, and children. As DAC has already developed a set of policy guidelines

¹²⁶⁸ See, e.g., UNICEF and SPFII 2012/2013.

regarding gender, the problem of intersectionality in the case of indigenous women and girls, and thus, particular exposure to discrimination and vulnerability, should be approached with particular attention. Indigenous women face discrimination both from outside and inside their communities, with particularly low access to education, often entering a cycle of discrimination and violence.¹²⁶⁹ Moreover, recent DAC guidelines on “Partnering with Civil Society”¹²⁷⁰ – including, *inter alia*, advice on funding, transparency and accountability, as well as balancing the respect for independence with providing direction – may be regarded as a good starting point for supporting indigenous organizations and advocates. Finland, as an active member of DAC, should promote development of standards, guidelines and intensified exchange of best practice within DAC, especially regarding indigenous peoples and indigenous women.

5.8.3. The Post-2015 Development Agenda: Recommendations¹²⁷¹

The following recommendations are designed to fully utilize opportunities created by the described above expected architecture of the new development agenda. Despite the advanced stage of the process, Finland may still attempt to use variety of entry points into the UN system, including debates in the General Assembly, global consultations, or Finnish participation in UN Task Team to strengthen the position of women and indigenous peoples in the new framework. Recommendations are based on ongoing consultation processes and already available reports within the current debate on the post-2015 development goals. It is believed that the rights of groups, particularly those vulnerable to climate change, would be better addressed by mainstreaming them across the new development agenda via identification of specific and relevant to indigenous peoples and womens’ development indicators.

a) Developing a Clear National Target-Setting System

If the new development agenda evolves in the direction defined above,¹²⁷² specific targets (based on global set of goals) must be established at the national and local level. Clear guidelines must be provided if national targets are to be inclusive with regard to indigenous peoples and women, incorporating human rights, and accounting for the impacts of climate change. **Finland should concentrate its interest not only on establishing a set of goals, but also on developing guidance for priority setting within national policy-making and in indicating preferred policy options for achieving such**

¹²⁶⁹ Mihlar, Farah, (2012, October). “Voices from the margins: including the perspectives of minorities and indigenous peoples in the post-2015 debate”. Addressing inequalities: The Heart of the Post-2015 Development Agenda and the Future we Want for All. Global Thematic Consultation. Minority Rights Group International.

¹²⁷⁰ OECD DAC (2012). “Partnering with civil society. 12 Lessons from DAC Peer Reviews”.

¹²⁷¹ Recommendations are partly based on the consultations conducted UNICEF and SPFII in December 2012 (UNICEF and SPFII (2012/2013). Online Discussion on Inequalities and Indigenous Peoples in the post-2015 Development Agenda; Summaries: Week1, Week 2 and 3; Addressing inequalities: The Heart of the Post-2015 Development Agenda and the Future we Want for All. Global Thematic Consultation. Available at www.worldwewant2015.org/) and Minority Rights Group International (Mihlar 2012).

¹²⁷² UNTT 2012.

goals.¹²⁷³ Defining abstract terms such as HRBA and good governance in policy documents and declarations is, thus, necessary.

b) Strengthening Civil Society for the Post-2015 Agenda

Civil society will play a major role in the design, implementation, and monitoring of the post-2015 progress, as well as in the evaluation of the achievements of the MDGs. Indigenous peoples and women should be not only seen as passive subjects whose rights need to be protected, but as active participants in shaping climate change policies and actions, including within the development framework.¹²⁷⁴ In order for civil society to play that role effectively (especially with regard to monitoring), contribute to desired progress and enter into meaningful partnerships with other actors, there is an urgent need to strengthen civil society actors by building capacity, developing a legal and political environment (including accountability and access to justice), providing financial and technical support as well as access to information.¹²⁷⁵ This is particularly crucial for already marginalized groups including indigenous peoples and poor women, especially indigenous women. Furthermore, the creation and function of indigenous and women's networks must be enhanced. Institutions, such as the UN Permanent Forum on Indigenous Issues, must be fully engaged in the post-2015 process. The upcoming 2014 World Conference on Indigenous Peoples, which could serve as a good place for engaging indigenous organizations in the final steps of the new development agenda.¹²⁷⁶ **Finland should play a major role in supporting women's and indigenous peoples' NGOs within development cooperation, as well as in influencing EU activities in the field, by: promoting legal regimes supporting NGO activity; including various stakeholders in ongoing political dialogues, via various forms of regional cooperation to which Finland is party to, as well as with partners in the Global South; and sharing the Finnish model and experience regarding the support of legal frameworks for and cooperation with civil society partners. The support of civil society partners could be done via instruments, such as UN Voluntary Fund for Indigenous Populations, and the support of international NGOs that enhance indigenous peoples' participation directly through Finnish development aid.**¹²⁷⁷

c) A Human Rights-Based Approach Beyond Development Policies

KEHYS (Finnish NGO Platform to the EU) pointed out to the need for the post-2015 development framework to incorporate *Policy Coherence for Development*, and implementing a HRBA into policies other than development policy, such as trade, and other forms of support. First, the "human rights-based approach" in the context of the new

¹²⁷³ UNTT 2012. Also Input from a stakeholder: KEHYS (Finnish DGNO Platform for the EU).

¹²⁷⁴ Input from a stakeholder: IWGIA (International Working Group on Indigenous Affairs). IWGIA is currently developing discussion papers on the 11 thematic themes and how they relate to indigenous peoples.

¹²⁷⁵ IDF 2013; IISD 2013; HLP 2013.

¹²⁷⁶ UNTT 2012.

¹²⁷⁷ In 2009, Finland was the single largest contributor to the Voluntary Fund, but since three years the donations stabilized at 20000-30000 USD per year, comparing to 2012 donations for Norway (over 200000), Sweden and Australia (c. 100000). Such support is particularly important during the time of development of post-2015 agenda and upcoming 2014 World Conference on Indigenous Peoples. See Voluntary Fund for Indigenous Populations at OHCHR website: <http://www.ohchr.org/Documents/Issues/IPeoples/Fund/RecentContributions.pdf>.

development agenda and sustainability must be clearly defined, especially now that it is a part of the Finnish development aid framework, MFA's human rights diplomacy, post-2015 development framework and a key element of indigenous politics both within Finland and internationally.¹²⁷⁸ Moreover, the Rio+20 outcome document clearly referenced the UNDRIP, clearly recognizing indigenous peoples' contribution to sustainable development in the chapter on Green Economy and in the Framework for Action (§58j and §109, respectively). Even if the Rio+20 outcomes may be seen as fairly weak, such statements should be followed up on and strengthened in the development of the new development framework and sustainable development goals.¹²⁷⁹

d) Indigenous Collective Rights: An Indispensable Element of the Human Rights Framework

While indigenous peoples were largely excluded from the Millennium Development Goals, there is clear need for the new set of goals, and associated indicators, to account for the special situation of indigenous groups. If a human rights-based approach is to become a foundation for the new post-2015 development agenda and prevent practices that adversely affect indigenous communities, recent international development in the field of indigenous rights must become an integral part of such a human rights framework. These include: FPIC; access to, ownership and control of the traditionally used lands and resources; the acknowledgment of collective rights; a right to education; as well as the prevention of discrimination against indigenous cultural, spiritual and religious practices.¹²⁸⁰ FPIC has the capacity to transform the pattern of development – rather than having indigenous communities respond to companies and authorities' plans, it allows indigenous peoples to initiate development that they regard as acceptable (within the legal framework of the state) and provides them with full control over the process, thus, giving indigenous peoples a possibility to truly determine their own development priorities. Moreover, it is important to note that FPIC should not be regarded as one-time consent, but rather as a process whereby the use of indigenous knowledge and dialogues with indigenous peoples serve as on-going elements of development projects.¹²⁸¹

The Alta Conference Outcome Document, for example, emphasised that “rights, culture and spiritual values [must] be integrated into strategies that relate to development including sustainable development goals and the post 2015 UN Development Agenda”. The document also called for the end to forced relocations of indigenous communities justified by development.¹²⁸² Moreover, access to land needs to be accompanied by the recognition (within development policies) of indigenous peoples' informal economies and mixed economies (where formal and informal economies are complementary). Collective ownership rights and the value of indigenous peoples' economic activities (as a contribution to the economy) must be considered when designing development

¹²⁷⁸ Input from stakeholders: KEHYS (Finnish DNGO Platform for the EU); IWGIA (International Working Group on Indigenous Affairs).

¹²⁷⁹ Input from a stakeholder: IWGIA (International Working Group on Indigenous Affairs).

¹²⁸⁰ See, e.g., *Alta Outcome Document* at <http://wcip2014.org/wp-content/uploads/2013/06/Adopted-Alta-outcome-document-with-logo-ENG.pdf>.

¹²⁸¹ Ibid.

¹²⁸² Ibid.

strategies.¹²⁸³ The social, cultural, and economic value of cultural diversity, thus, needs to be underlined.¹²⁸⁴

The final document of the Alta 2013 indigenous preparatory conference, underlined the need to establish “public policies which guarantee the right to food, food sovereignty, food security and safety and the right to water and clean air for indigenous peoples.”¹²⁸⁵ This includes abandoning the subsidized expansion of “industrial, commercial agriculture plantations which promote toxic chemical fertilizers and pesticides as well as genetically modified organisms (GMO’s) in Indigenous lands and territories.”¹²⁸⁶ Development projects aiming to fulfilling post-2015 goals must take account of these concerns of indigenous communities. **Finland should, thus, support measurable targets and specific indicators for post-2015 goals, developed for anti-discrimination and the protection of human rights, in the post-2015 development agenda drafting process.**¹²⁸⁷

e) Private Sector & Human Rights-based Development

A human rights-based approach to development should extend to the activities of private businesses and multinational corporations. Currently, only a small percentage of companies active in indigenous areas acknowledge FPIC and even fewer have adopted appropriate policies and best practices.¹²⁸⁸ The observance of human rights by private actors is a prerequisite for equal and non-discriminatory development, whereby human rights are not treated as trade-offs. Finland should engage businesses in observing indigenous and women’s rights as a part of the new development agenda. This includes the development of stricter standards for Finnish companies operating abroad (e.g. encouragement for industry standards and CSR and ongoing dialogue between Finnish foreign service and companies), especially in regions, where violations of vulnerable groups’ human rights may occur.

f) Ongoing Need for a Goal of Mainstreaming Gender Equality alongside Specific Goals in the Post-2015 Framework

A paper published by UN Women¹²⁸⁹ outlines that Sustainable Development Goals and the post-2015 framework provide a chance for a transformative approach to gender equality, women’s rights, and full participation in decision-making. A separate goal toward gender equality remains necessary for the following reasons: (1) to understand and highlight the critical role of women in economic development, (2) to prioritize the poorest and most marginalized women and girls (based on their own priorities and experiences), (3) to address the roots of ongoing inequalities, (4) to identify appropriate and reliable indicators

¹²⁸³ Online Discussion on Inequalities and Indigenous Peoples in the post-2015 Development Agenda; Summaries: Week1, Week 2 and 3; Addressing inequalities: The Heart of the Post-2015 Development Agenda and the Future we Want for All. Global Thematic Consultation. Available at www.worldwewant2015.org/

¹²⁸⁴ UNTT 2012.

¹²⁸⁵ *Alta Outcome Document* at <http://wcip2014.org/wp-content/uploads/2013/06/Adopted-Alta-outcome-document-with-logo-ENG.pdf>.

¹²⁸⁶ Ibid.

¹²⁸⁷ Mihlar 2012; UNICEF and SPFI 2012/2013.

¹²⁸⁸ UNICEF and SPFI 2012/2013.

¹²⁸⁹ UN Women 2012.

that reflect identified needs and root causes.¹²⁹⁰ However, at the same time, adopting gender equality as a crosscutting issue across all relevant areas is clearly needed. Under each goal, the international community should identify indicators reflecting gender barriers and their structural causes.¹²⁹¹

In their reflections on the report of the High-level Panel's post 2015 Development Agenda, the Women's Major Group (WMG)¹²⁹² noted its concern with the "narrow set of goals and predominance given to the corporate/business sector" of the post-2015 development agenda, as well as the inconsistent application of human rights. Moreover it noted that the following:¹²⁹³

- While *Goal 2 (to empower girls and women)* contains some positive targets, the entire development agenda lacks an underpinning of women's rights. Moreover, it does not build on the existing internationally agreed-upon normative framework of women's rights as human rights.¹²⁹⁴ Financing for Gender Equality is not a priority in the HLP report.
- The WMG and other CSOs had already criticized the MDGs for not having taken a human-rights based approach to development. Consequently, the introduction of goals under the HLP's report also limits the focus on a small number of goals and only a few targets, thus resulting in the prioritization of a few human rights, while ignoring others and thereby reinforcing developments silos. **Consequently, Finland must ensure that gender equality is included in all goals, with specific gender targets per goal.**
- The report does not include a target for enforcing laws and policies promoting gender equality and eliminating laws, policies, and practices that discriminate against and are harmful to women and girls (e.g. economic and social policies that contribute to achieving gender equality and align with human rights principles). **Finland must help ensure that a human rights framework is applied to the design of development priorities as it is vital for women to achieve their goals.**
- Current Millenium Development Goal 9 does not sufficiently consider the role of women, indigenous peoples, or other communities in conserving and restoring soils, coastal and marine territories or other ecosystems. Rather than being regarded as active actors in sustainable livelihoods, these groups are instead regarded as victims. Consequently, Finland should help ensure that indigenous peoples and women's traditional knowledge are recognized in policy-making.
- The report does not include a critical link between women's rights and climate change. Finland should help ensure that illustrative targets (e.g. relating to energy, agriculture, transport, deforestation, and food security) are met by ensuring, among others, women's access and control over natural resources, safeguarding women's

¹²⁹⁰ Gender and Development Network (2013, January), "Achieving Gender Equality and Women's Empowerment in the post-2015 framework"; Bradshaw, Sarah, Joshua Castellino and Bineta Drop (2013, May), "Women's role in economic development: Overcoming the constraints" Background paper for the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, Sustainable Development Solutions Network.

¹²⁹¹ Gender and Development Network 2013.

¹²⁹² Women's Major Group Sustainable Development, access at: <http://www.womenrio20.org/>.

¹²⁹³ "Reflections on HLP post 2015 report – by far not good enough!", Women's Major Group, 12 June, 2013.

¹²⁹⁴ Women's Major Group Statement, Bonn: http://www.womenrio20.org/docs/final_Women%20Statements_Endorsements-2.pdf

traditional knowledge. Moreover, financing for gender equality should move away from short-term funding cycles to long-term partnerships that are predictable, flexible, and multi-year. The participation of representatives from women's organizations and movements is also paramount.

A set of specific indicators (e.g. access to justice; access to education beyond primary education; addressing women's sexual and reproductive needs; economic regulations and employment policies that prevent discrimination; security and justice sector reforms; occupation of leadership positions), rather than one insufficient indicator (as in current MDG3), should be identified. Finland, as a state particularly dedicated to women's rights, should promote gender equality and women's empowerment as a cross-cutting issue, so that it pervades all the goals and national/local targets, in UN forums that are currently working on the post-2015 framework. Moreover, the 58th Commission on the Status of Women will focus on the challenges and achievements of MDGs, particularly looking toward what the SDGs should include. At the Commission, Finland should particularly highlight the link between climate change, human rights, and gender.

g) Acknowledging Structural & Historical Factors of Indigenous Underdevelopment & Inequality

Any development policy and action directed at (or affecting) indigenous peoples should account for factors and root causes of inequality. Stakeholders have identified the following as major obstacles to development: invisibility (lack of recognition or perceived numerical insignificance); colonization and its legacies, assimilation policies (historical and on-going); a lack of a culturally sensitive approach (towards indigenous cultures, customs, especially regarding legal issues and access to services such as health, education, infrastructure, when standard delivery models ignore diversity of indigenous livelihoods and practices); barriers in claiming rights in courts or within political systems; poor education quantity and quality; poverty and a lack of access to natural resources.¹²⁹⁵ Furthermore, health issues must be approached holistically, as opposed to via isolated programmes on particular diseases.¹²⁹⁶ **Finnish foreign policy should, in a dialogue with partners, underline historical and structural dimensions of human rights violations and persistent inequalities. Historical and structural factors should be also visible in the post-2015 agenda if the national target setting is not to strengthen the prevalent causes of marginalization, discrimination and vulnerability.**

h) The Resilience of Vulnerable Groups

Strengthening community resilience to multiple stressors resulting from global change, in particular climate change, must be incorporated into the new post-2015 development framework so as to minimize the exacerbation of existing inequalities. Particular attention

¹²⁹⁵ Online Discussion on Inequalities and Indigenous Peoples in the post-2015 Development Agenda; Summaries: Week1, Week 2 and 3; Addressing inequalities: The Heart of the Post-2015 Development Agenda and the Future we Want for All. Global Thematic Consultation. Available at www.worldwewant2015.org/; see also *Alta Outcome Document* access at: <http://wcip2014.org/wp-content/uploads/2013/06/Adopted-Alta-outcome-document-with-logo-ENG.pdf>.

¹²⁹⁶ UN Women 2012; IDF 2012.

should be given to vulnerable populations in precarious livelihoods (such as many pastoralist communities).¹²⁹⁷ However, making communities resilient cannot undermine their rights to access various social services, right to develop, or replace them with ideas of self-reliance. **Finnish foreign policy should couple a human rights-based approach with a resilience approach. In order for communities to be resilient to change, basic human rights (access to water, education, health services) must be applied within a specific cultural and situational context as standard delivery models do not always fit into indigenous livelihoods and cultural practices and various communities show different resilience to change.**¹²⁹⁸ This should be reflected in development aid, but also in the framework for the post-2015 development agenda, which might account for the resilience of vulnerable communities if the new set of sustainable goals is to be realized without sacrificing communities that happen to be more vulnerable than majority society.

i) Disaggregated Data, Representative Indicators & Inclusive Monitoring

MDGs apply to general population statistics and, thus, often conceal inequalities. Progress made by society, in general, has widened inequality gaps, as indigenous groups have remained behind due to discrimination, social and economic barriers.¹²⁹⁹ The post-2015 agenda aims to reverse the trend of increasing inequalities.¹³⁰⁰ Disaggregated data regarding gender, ethnicity, income, age, and region is crucial for monitoring progress as statistics must be robust if progress is to be credible. Furthermore, indicators must not only reflect the availability, but also the quality of services.¹³⁰¹ In the case of indigenous peoples, the identification of cultural and social indicators – a very challenging task – is of critical importance.¹³⁰²

Monitoring progress should be based on the broad participation of civil society actors and available disaggregated data.¹³⁰³ Monitoring should not only examine achieved results but should also focus on processes from the perspective of a HRBA and good governance, including an assessment of the link between achieved progress and the widening/closing of inequality gaps, use of traditional knowledge and expertise on indigenous and gender issues. The monitoring of post-2015 progress should be connected to a robust accountability framework at the national, regional and international level, primarily via governments' human rights and human security obligations.¹³⁰⁴ Moreover, in many states, it is unclear to what extent minorities and indigenous peoples fair better or worse in comparison to the majority community, mostly because data has not been collected or existing data has not been disaggregated. **Finland should, thus, ensure that**

¹²⁹⁷ UNTT 2012.

¹²⁹⁸ UNICEF and SPFII 2012/2013.

¹²⁹⁹ See more in section XX on XX.

¹³⁰⁰ HLP 2013.

¹³⁰¹ HLTF ICPD 2013; Gender and Development Network 2013.

¹³⁰² For instance, a report on Cultural Indicators for Food Security, Food Sovereignty and Sustainable Development was presented in 2006, focusing on “inextricable link between traditional indigenous food systems and bio-cultural relationships, understandings and practices upon which they are based” (see, UNICEF and SPFII 2012/2013). See also Arctic Social Indicators (Arctic Council 2011).

¹³⁰³ IDF 2013; HLP 2013.

¹³⁰⁴ HLTF ICPD 2013.

disaggregated data and a participatory approach are a part of its development aid activities, aiming at the fulfilment of the post-2015 framework.

j) Access to and Control over Land and Resources: A Crucial Indicator

Access to land and resources is crucial for women and indigenous peoples, where it is at the core of indigenous self-determination. Climate change places additional stress on access and control over land, which is connected to the right to food and food sovereignty; as well as issues like patents on plants and seeds, toxic contaminants, or the right to traditional food. For women, especially indigenous women, limited land ownership contributes to poverty and a lack of control over their own destiny, which is often connected to violence and abuse.¹³⁰⁵

Certain models of development, promoted via MDGs and reflected in various projects, have been problematic in terms of indigenous peoples' relationship to their land. The degree of self-determination with regard to land and resources reflects on culture, well-being, health, community viability, participation in decision-making and the control of developments occurring within indigenous lands. Competition for scarce resources and the loss of land to development will to continue to be critical issues for indigenous peoples over the coming decades.¹³⁰⁶ **In this context, Finland should promote the use of indicators for post-2015 goals that refer to access to land and argue for viewing land ownership and land rights as enablers for development.**

k) Participatory Impact Assessments for Development

Integrated impact assessments conducted for various development, programmes, strategies and policies are crucial elements for sustainable development. Environmental, social, economic and human rights impacts must be assessed before activities or policies are put into action. Current and future climate change impacts, especially on vulnerable communities and groups, must consider potential pressures created by development policies. The recognition and use of traditional knowledge,¹³⁰⁷ as well as accounting for gender issues and cultural specifics must be included in impact assessments. These must, in turn, be accompanied by the active and meaningful participation (e.g. FPIC) of indigenous peoples. One way for Finland to promote a stronger impact assessment is by applying and promoting best practices in its own development aid activities, connected to the fulfilment of post-2015 targets. Attention to impact assessments should however also be a part of the post-2015 framework and an important element of understanding of good governance – relevant for both Global South and Global North.

¹³⁰⁵ See, e.g., UNTT 2012. See also *Alta Outcome Document* access at: <http://wcip2014.org/wp-content/uploads/2013/06/Adopted-Alta-outcome-document-with-logo-ENG.pdf>.

¹³⁰⁶ Mihlar 2012; UNICEF and SPFI 2012/2013.

¹³⁰⁷ UNTT 2012.

Chapter 6. REDD

6.1. Introduction

Forests – a source of vital ecosystem services providing food, water, fuel wood, and regulatory services – cover 30 per cent of the world's land area and contain over two-thirds of the world's terrestrial biodiversity. However, forests are also increasingly pressured as a result of growing global consumption. In 2007, the IPCC, estimated that the forest sector contributed approximately 17 per cent of GHG emissions due to, among other reasons, deforestation and forest degradation. Drivers of deforestation not only reduce resilience, but are manifold – from attaining economic growth and a lack of monitoring to unclear land ownership, corruption, illegal logging, and forest fires.¹³⁰⁸ This is particularly visible in the Global South, where forests are logged for plantations and cleared for mining. The increased value of forests has also led to a rise in state ownership of land (currently pegged at 70 per cent). This becomes particularly worrisome when considering that these forests are also home to 300 million people and provide livelihoods to as many as 1.3 billion people living in extreme poverty – 70 per cent of whom are women. These communities will become even more vulnerable as climate change (e.g. forest fires, landslides, and floods) affects their resilience. However, as Seymour points out, the notion that deforestation only hurts the poor is flawed.¹³⁰⁹ In some cases, the rural poor may also profit from forest degradation.

Introduced within the structure of the climate change regime in 2005, REDD is a mechanism at the centre of climate change negotiations. It is central to global and national mitigation strategies, providing incentives for reducing emissions from deforestation and forest degradation in developing countries by creating financial value (e.g. financial compensation) for carbon stored and absorbed by forests, thus, providing developing countries with funding for limiting deforestation and forest degradation.¹³¹⁰ This is, in part, because “forest preservation in developing countries is the mitigation option with the largest and most immediate carbon stock impact in the short term.”¹³¹¹ REDD+¹³¹² – which

¹³⁰⁸ Climate change may further exacerbate these drivers, leading to a tipping point with severe ecological and social impact and unprecedented urgency for managing forest territories. In Seymour, Frances. (2010) "Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs", 209; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹³⁰⁹ How people utilize and manage forests depends on socio-economic and socio-cultural factors – including environment, age, and gender. Women, whose household responsibilities and income are dependent on the gathering of forest products, will likely be disadvantaged.

¹³¹⁰ The Copenhagen Accord para. 8 states: “REDD+ refers to the commitment made by Parties to provide substantial funding to reduce emission from deforestation and forest degradation.” In order to compensate for opportunity loss, Annex I countries make financial transfers to developing countries. “REDD+ is expected to work by increasing the value of standing forests, either through the development of funds to support sustainable forestry programs or the creation of carbon offset markets that would allow investors to purchase shared of sustainability managed forests.” In Adelman, S. ‘Rethinking Human Rights’, 2, In S Humphreys (ed) *Human Rights and Climate Change* (2010) 166 Cambridge University Press: UK; see also: <http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx> (last accessed: 31 March 2013).

¹³¹¹ Intergovernmental Panel on Climate Change, access at: <http://www.ipcc.ch>.

¹³¹² See: <http://www.clientearth.org/climate-and-forests/law-rights-governance/redd-1020>; For a better understanding on the difference between REDD and REDD+. See also:

includes conservation, sustainable forest management, and enhancement of forest carbon stocks – is particularly interesting because, even though the framework and its detailed provisions are still under negotiation, pilot projects that have developed with funding from three major multilateral REDD+ funding schemes – UN-REDD, Forest Carbon Partnership Facility (FCPF)¹³¹³, and the Forest Investment Program (FIP) – or national governments are already testing its viability in 44 countries, thus, leaving plenty of room to influence current policies. At the same time, an international approach to forestry may directly impact vulnerable peoples' human rights, leading may be skeptical of the potential risks associated with REDD+ mechanisms.

In the climate change regime, negotiations on forest and climate change mitigation took place along two tracks: the Ad Hoc Working Group on Long Term Cooperative Action (AWG-LCA), which dealt with REDD+, and the Subsidiary Body on Scientific and Technological Advice (SBSTA), which deals with methodological aspects related to REDD+ (e.g. providing guidance on Safeguard Information Systems [SIS], Reference Emission Levels, Forest Monitoring Systems, and drivers of deforestation). REDD was initially discussed at negotiations leading to the adoption of the Kyoto Protocol, but was ultimately rejected. There were four problems, in particular: leakage¹³¹⁴, additionality¹³¹⁵, permeance¹³¹⁶, and the complexity of measuring and monitoring diverse ecosystems and land use change¹³¹⁷. Nonetheless, a provision relating to forest-related sinks, under the Kyoto Protocol's Article 3, was included. Discussions continued in Marrakech at COP7 under Land Use, Land-Use Change and Forestry (LULUCF). The adoption of rules for the application of LULUCF activities and discussions on LULUCF in developed countries also took place. At COP11 in Montreal, the Coalition of Rainforest Nations, led by Papua New Guinea, proposed REDD as a mechanism for compensating tropical forest countries¹³¹⁸ reducing GHG emissions from deforestation.¹³¹⁹ This request was, in turn,

http://www.iucn.org/about/work/programmes/forest/fp_our_work/fp_our_work_thematic/redd/redd_plus_explained/.

¹³¹³ To date, Finland has supported the Readiness Fund of the FCPF with a total of EUR 11 million.

¹³¹⁴ While deforestation might be avoided in one place, forest destroyers may move to another area of forest or to a different country.

¹³¹⁵ The near-impossibility of predicting what might have happened in the absence of the REDD project.

¹³¹⁶ Carbon stored in trees is only temporarily stored. All trees eventually die and release carbon back to the atmosphere.

¹³¹⁷ This was ultimately the reason why it was not adopted. Accurately measuring the amount of carbon stored in forests and forest soils is extremely complex and prone to large errors.

¹³¹⁸ REDD+ proponents argue that tropical forests will continue to be logged or burned until their value standing exceeds their value dead. See "REDD." *Rainforests: facts, figures, news, and pictures*, access at: <http://rainforests.mongabay.com/redd/> (last accessed: 27 July 2013).

¹³¹⁹ Related discussions were to be concluded within two years. Subsequently, the Subsidiary Body for Scientific and Technological Advice and a workshop coordinated by SBSTA began their reviews. Tropical forests are being lost at significant rates, with 13 million hectares lost annually in the 2000s. In Food & Agri. Org. of the UN, "Global Forest Resources Assessment: Key Findings" (2010) <http://foris.fao.org/static/data/fra2010/KeyFindings-en.pdf> (last accessed: 31 March 2013); These forests contain the majority of the planet's land-based and freshwater biodiversity. In Greenpeace, "Bad Influence: How McKinsey-Inspired Plans lead to Rainforest Destruction" 2 (2011), [http://www.greenpeace.org/international/Global/international/publications/forests/2011/Greenpeace_BadInfluence_Report_LOWRES\(2\).pdf](http://www.greenpeace.org/international/Global/international/publications/forests/2011/Greenpeace_BadInfluence_Report_LOWRES(2).pdf) (last accessed: 31 March 2013); The profoundly beneficial environmental services that tropical forests provide to all people have led some to conclude that global initiatives to protect

referred to the SBSTA.¹³²⁰ The proposal was taken up at COP13 in Bali where member states decided to engage in national and international actions against climate change by considering, “policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.”¹³²¹ The subsequent Bali Roadmap laid the foundation for REDD, placing a price on deforestation based on the basic economic model of the UNFCCC and the Kyoto Protocol.¹³²² At the same time, the adoption of the Roadmap also resulted in the transition from REDD to REDD+, a more effective and flexible form.¹³²³ Furthermore, it recognized that, “the needs of local and indigenous communities should be addressed when action is taken to reduce emissions from deforestation and forest degradation in developing countries.”¹³²⁴ The deadline for reaching a final agreement on specific matters regarding REDD+ was then set to take place at COP15 in Copenhagen.¹³²⁵ At COP15, member states reconfirmed the importance of REDD+ and committed to providing financial resources to support REDD+ programs, which were regarded as a promise “to solve two of the most vexing problems confronting humanity today: decimation of tropical forests and climate change.”¹³²⁶ However, while the Copenhagen Accord stressed the need for the “full and effective engagement of indigenous peoples and local communities in REDD+, the rights of forest communities” had not yet been recognized. COP16 in Cancun saw a proposal on specific work to implement REDD+. This included the development of milestones and monitoring methods and safeguards – monitoring, review and verification (MRV) of REDD-based emissions reduction, as well as domestic plans with the full participation of all concerned stakeholders, including

these forests are inevitable. In Banda, Maria, and John Oppermann, “Building a Latin American Coalition on Forests: Negotiation Barriers and Opportunities”, 44 Vand. J. Transnat’l L. 527, 556-557 (2011).

¹³²⁰ The United States challenged the proposal, but failed in its attempts. Access at: <http://news.mongabay.com/2009/0722-redd.html>.

¹³²¹ A Brief History of REDD/REDD+. See table at: <http://www.mmechanisms.org/e/redd/timeline.html>.

¹³²² REDD+ is based on paragraph 1(b)(iii) of the Bali Action Plan, adopted at COP-13 (2007).

¹³²³ See table at: <http://www.mmechanisms.org/e/redd/timeline.html>; Abate, Randall S., “A Tale of Two Carbon Sinks: Can Forest Carbon Management Serve as a Framework to Implement Ocean Iron Fertilization as a Climate Change Treaty Compliance Mechanism?”, 1 Seattle J. Envtl. L. 1, 6 (2011) (citing Food and Agriculture Organization and the Center for People and Forests, *Forests and Climate Change after Copenhagen: An Asia-Pacific Perspective* 6 (2011), access at http://recofte.org/site/filesadmin/docs/publications/The_Grey_Zone/2010/FcC-after-Copenhagen_3.pdf (last accessed 15 August 2012)).

¹³²⁴ Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-Bell-Stiftung, 77.

¹³²⁵ Richards, Michael. (2008) “REDD, the last chance for tropical forests?”, FRR, access at: http://www.theidlgroup.com/documents/PolicyBrief-REDDLastChanceforTropicalForestsAugust2008_FINAL.pdf (last accessed: 26 July 2013).

¹³²⁶ The following statement was included in the Copenhagen Accord: “We recognize the crucial role of reducing emission from deforestation and forest degradation and the need to enhance removals of greenhouse gas emission by forests and agree on the need to provide positive incentives to such actions through the immediate establishment of a mechanism including REDD+, to enable the mobilization of financial resources from developing countries.” Abate, Randall S., “A Tale of Two Carbon Sinks: Can Forest Carbon Management Serve as a Framework to Implement Ocean Iron Fertilization as a Climate Change Treaty Compliance Mechanism?”, 1 Seattle J. Envtl. L. 1, 6 (2011) (citing Food and Agriculture Organization and the Center for People and Forests, *Forests and Climate Change after Copenhagen: An Asia-Pacific Perspective* 6 (2011), available at http://recofte.org/site/filesadmin/docs/publications/The_Grey_Zone/2010/FcC-after-Copenhagen_3.pdf (last accessed 15 August 2012)).

indigenous communities – for the SBSTA to mitigate the adverse effects of REDD+ projects.¹³²⁷ FPIC, thus, became an element in REDD+ implementation. Furthermore, under the Cancun agreements, “parties [to the Convention] should, in all climate change-related actions, fully respect human rights”¹³²⁸ The Outcome of the Ad Hoc Working Group on long-term Cooperative Action, under the Convention, also explicitly linked vulnerability and gender equality with regard to REDD+, noting the “effective participation of women as being ‘important for effective action on all aspects of climate change.’”¹³²⁹ A decision on finance mechanisms for REDD+ was, nevertheless, postponed.¹³³⁰ Additional advancements took place at COP17 in Durban. These included the confirmation of Cancun’s decisions on national REDD+ strategies, as well as measuring the efficiency and effectiveness of actions. COP18 aimed at laying the roadmap for a globally binding agreement on emissions reductions, to be finalized in 2015, and agreed to launch a one-year work programme on REDD+ financing.¹³³¹ No decisions on the future of REDD+ and its impacts for indigenous peoples’ lands and livelihoods were made. **Furthermore, it is important to note that while the Kyoto Protocol was extended, the negotiating track for REDD+ (AWG-LA) wrapped up at COP18 in Doha.**^{1332 1333} **Discussions in 2013 will primarily focus on: modalities for national forest monitoring system; monitoring, reporting and verification (MRV); provision of information on how safeguards are addressed and respected; issues related to drivers of deforestation; issues related to non-carbon benefits. Draft decisions on how to improve the effectiveness of REDD+ finance, as well as methodological issues of non-carbon benefits are being developed through a series of workshops for the adoption at COP19 in Warsaw.**

¹³²⁷ The AWG—LCA suggested establishing safeguards that respect both indigenous and local communities’ knowledge and rights by taking UNDRIP into account. See table at: <http://www.mmechanisms.org/e/redd/timeline.html>.

¹³²⁸ Conference of the Parties to the United Nations Framework Convention on Climate Change, Decision 1/CP.16.

The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para. 8 (Cancun, 15 Mar. 2011), U.N. Doc. FCCC/CP/2010/7/Add.1 [hereinafter Decision 1/CP.16].

¹³²⁹ UN-REDD Programme (2011), “The Business Case for Mainstreaming Gender in REDD+”, UNDP, UNEP, and FAO, 10.

¹³³⁰ “The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention”, Decision 1/CP.16/FCCC/CP/2010/7/Add.1, Paragraph 2(d), 2, <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page02> (last accessed: 29 March 2013).

¹³³¹ Entry points for indigenous peoples at COP18 were highlighted in a briefing prepared by the Forest Peoples Programme. Access at: <http://www.forestpeoples.org/topics/un-framework-convention-climate-change-unfccc/publication/2012/redd-and-indigenous-peoples-an>.

¹³³² The agreed-upon negotiations with regard to REDD+ can be found in the Final LCA text, which “recognizes the need to talk about ways to ‘incentivize non-carbon benefits’” (e.g. supporting forest peoples or biodiversity preservation).

¹³³³ The following topics were expected to be discussed at COP18: rights-based safeguards in information systems; the valorization of traditional knowledge; support for indigenous monitoring systems for REDD+; key threats to indigenous peoples’ rights with reference to drivers of deforestation; the need to take into account non-carbon values of forests in REDD+ financing. However, no decisions on these topics were made. SBSTA negotiations were concluded without the adoption of any decisions. Access at: <http://www.forestpeoples.org/topics/un-framework-convention-climate-change-unfccc/news/2013/02/unfccc-cop-18-makes-no-concrete-de>

The debate surrounding REDD+ has been narrow to date.¹³³⁴ Most research on REDD+ has focused on methodological approaches with little emphasis placed on actors' participation in policy processes.¹³³⁵ The complexity that arises in designing and implementing REDD+ continually raises important questions and challenges requiring innovative solutions and approaches. These include, among others: How do countries properly engage a wide range of stakeholders, from indigenous peoples to the private sector? How can the rights of indigenous peoples and other forest dependent communities be guaranteed? What is the difference between Free Prior and Informed Consent *versus* Free Prior and Informed Consultation and how does it affect the participatory rights of indigenous peoples? What are the best tools for establishing effective MRV and monitoring systems for REDD+? Can consultation serve as a reform of the relationship between the state and indigenous communities? This section aims to, albeit briefly, examine the complex structure of REDD+ governance, while defining entry points for Finland to help improve indigenous peoples' and women's ability to participate in REDD+ processes – from FPIC and REDD+ financing to the participatory role of indigenous women.

6.2. Structure

REDD+ is constructing and performing a complex series of engagements and institutional arrangements inside and outside current institutional set-ups. Here, decision-making processes take a decentralized approach. Nonetheless, their complexity places a weight upon actors – from state agencies to indigenous peoples to private investors – who have multiple procedural choices based on various stakeholder categories.¹³³⁶ Consequently, REDD+ is, in a way, forcing ministries to change existing set-ups, opening up political spaces for contestation.¹³³⁷

REDD+ takes place at multiple levels – nationally, sub-nationally, and on a project level – where multiple actors link the economy, the environment, and human rights.¹³³⁸ UN-REDD and the World Bank's Forest Carbon Partnership Facility (FCPF) are two multilateral REDD+ Readiness¹³³⁹ platforms that support states in preparing for a future

¹³³⁴ Stakeholder Consultation with Deborah Delgado Pugley. Interview with the author.

¹³³⁵ Steiner, Achim, UN Under-Secretary-General, Executive Director, UN Environment Programme (UNEP), Mahama Kappiah, and Executive Director of ECREEE. "UNRISD Paper Examines Social Dimensions of the Global Political Economy of REDD+ - Climate Change Policy & Practice." *Climate Change Policy & Practice - Daily News*. access at: <http://climate-l.iisd.org/news/unrisd-paper-examines-social-dimensions-of-the-global-political-economy-of-redd/> (last accessed: July 25, 2013).

¹³³⁶ Actors include: the World Bank FCPF, Forest Investment Program (FIP), the BioCarbon Fund, UN-REDD, the Global Environment Facility (GEF), the REDD+ Partnership, and bilateral agreements. Furthermore, under REDD+, national and sub-national governments, communities, and projects may be financially rewarded via REDD+.

¹³³⁷ Deborah Delgado Pugley, "Individual, Group or Collective Rights?", Presentation at "Beyond the individual: the notion of group in human rights research", a Workshop hosted by the Arctic Centre and the Finnish Doctoral Programme in Human Rights Research, April 10th, 2013.

¹³³⁸ Parker, Charlie, and Andrew Mitchell. (2009) "The little REDD+ book: an updated guide to governmental and non-governmental proposals for reducing emissions from deforestation and degradation." Oxford, UK: Global Canopy Programme, xiii.

¹³³⁹ REDD+ relates to efforts that a country undertakes with the support of either multilateral or bilateral initiatives in order to build capacity for a REDD+ mechanism.

REDD+ mechanism, as a part of the international climate change regime, through financial support, and technical guidance. As noted, while REDD+ is gaining momentum in climate change negotiations, pilot projects sponsored by the WBG's FCPF and UN-REDD, as well through bilateral agreements are currently testing the viability of REDD+.

UN-REDD and FCPF support approximately 40 countries in developing and implementing plans in preparation for REDD+ at *the national level*. A country-level Standards Committee oversees and supports the use of the standards in each country, ensuring balanced stakeholder participation in the interpretation of indicators and the development and implementation of the MRV process.¹³⁴⁰ Brazil, for instance, is independently designing a national-level stakeholder engagement platform. Stakeholder participation, often led by local governments, NGOs, and REDD+ project developers, has emerged as a key component at the sub-national and project level. In Brazil, for example, "the state governments of Acre, Mato Grosso, and Amazonas have created permanent forums to engage multiple stakeholders, including federal level agencies, in the design of state led environmental services programs including REDD+."¹³⁴¹ Local REDD+ pilot projects have also led to unique lessons on stakeholder engagement. For example, in Indonesia, "the District Government of Berau in the Province of East Kalimantan and The Nature Conservancy (TNC) are collaborating to engage local communities in REDD+ activities (TNC 2010)."¹³⁴²

The notion that development cooperation, in the context of REDD+, requires capacity-building has led to a three-phase approach that is supported by multilateral platforms (e.g. UN-REDD Programme, the Readiness Fund of the WBG's FCPF, or bilateral agreements with individual donor countries). The phased approach includes the following:

Phase 1: The Development of National Strategies, Policies, Measures, and Capacity Building. Phase 1 includes initial financing and strategic development:

- Analyzing existing national statutory, formal and informal customary laws, traditional practices for protecting, promoting, or inhibiting gender equality/equity with a focus on political participation, land tenure, employment and wage equity.
- The collection, analysis, and utilization of sex-disaggregated data in assessing drivers of deforestation and degradation, contributors to sustainable forest management, conservation, and the enhancement of forest carbon stocks. This helps clarify differential access, gender-division, and strategic needs.
- Identifying and utilizing country-specific gender standards and indicators.
- Ensuring gender-responsive architecture (e.g. consultation requirements, procedural guidance, and decision-making quotas).
- Ensuring gender-responsive architecture.

¹³⁴⁰ Daviet, Florence. (2011) "A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices", UN-REDD and FCPF, 16, access at: <http://reddpluspartnership.org/29784-0289f409d14013a9a0a70d5a5d49e7676.pdf> (last accessed: 27 July 2013).

¹³⁴¹ Ibid.

¹³⁴² Ibid.

- Engaging women's organizations (e.g. to informing national strategies and policy frameworks; collaborating with women's organizations on gender-sensitization and REDD+ capacity building)

Phase 2: REDD+ Readiness – The Implementation of National Strategies

Phase 2 includes the implementation of national policies, measures, and action plans that may involve capacity building and technology development, technology transfer, and results-based demonstration activities via: gender-sensitive participatory budgeting; gender analysis of project and programme design; gender analysis of national strategy implementation; requirements, mandates, or provisions for gender-balanced participation in decision-making bodies; gender-inclusive consultation, implementation, monitoring, and evaluation. Moreover, they may include actions for addressing tenure and forest governance issues (including benefit-sharing), as well as gender considerations and safeguards that ensure the effective participation of both indigenous peoples and other forest-based communities. They are also expected to establish SIS¹³⁴³. Wessendorf has noted that past projects (2009-2010 and 2010-2013) have come a long way in developing awareness of the human rights dimension of REDD+ among indigenous peoples, policy-makers, and international organizations. These projects have also helped build actors' knowledge and skills for analyzing and understanding "the implications of REDD+, to take informed decisions, to represent their views and to actively advocate and lobby for the recognition and protection of their rights."¹³⁴⁴

Phase 3: Fully-measured, Reported, and Verified Results-based Actions

Phase 3 provides payment to participants and aims to ensure: equal access to and benefit from REDD+ schemes (e.g. employment opportunity; mandatory auditing of funding spent; gender-sensitive MRV (e.g. women as forest users and managers, equitable access to and distribution of benefits); mandatory auditing of funding spent (for women and indigenous peoples); incentives, resources, and mandates that guarantee women's and indigenous peoples' roles at each level of decision-making.

Most participating countries are currently undergoing Phase 1 or are in the early stages of Phase 2, supported by the multilateral platforms outlined above. For example, Australia has entered into a bilateral agreement with Indonesia to provide technical support to some of the latter's REDD+ programmes.¹³⁴⁵ However, such agreements require safeguards. For example, Norway's International Forests and Climate Initiative has made its funding to Guyana and Indonesia conditional upon governance requirements limiting deforestation.¹³⁴⁶

¹³⁴³ Safeguard Information systems are a system for providing information on how safeguards are addressed and respected in all REDD+ activities.

¹³⁴⁴ Stakeholder Consultation with Kathrin Wessendorf. Interview with author.

¹³⁴⁵ Angelsen, Arild.(2012) *Analysing REDD+: challenges and choices*. Bogor Barat: Center for International Forestry Research, 37.

¹³⁴⁶ Ibid.

6.2.1. UN-REDD and the World Bank Group

Both UN-REDD and the FCPF have developed joint guidelines with the aim of supporting effective stakeholder engagement for REDD+ readiness, especially with regard to indigenous peoples and other forest-dependent communities. These guidelines are a first effort to harmonize work under UN-REDD and the FCPF and, thereby, reduce the burden on REDD+ countries. This is in line with the UNFCCC Cancun Decision 1/CP.16, which included two particular safeguards that provide: 1) “respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the UN GA has adopted the UNDRIP”; and 2) “the full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities” in REDD+. In addition, both platforms have noted that they recognize the importance of international obligations, treaties, and national laws.

6.2.1.1. UN-REDD

The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD)¹³⁴⁷ – with a board consisting of REDD+ countries, donors, indigenous peoples’ representatives, civil society organizations, and three UN agencies (FAO, UNDP¹³⁴⁸, and UNEP) – is a forerunner and global platform for supporting REDD+ Readiness.¹³⁴⁹ Applying a HRBA, the programme aims to support, respect, and promote the rights of all people(s) affected by REDD+ activities. Its five-year-strategy includes the UNDP, whose role is to support national governance systems for REDD+ – the transparent, accountable, and equitable management of REDD+ funds, as well as the engagement of local communities, and indigenous peoples. The UN-REDD Programme strategy (2011-2015) focuses on providing capacity building for technical requirements in areas including MRV, stakeholder engagement and equitable benefit sharing at the national level. To date, 40 partner countries have received funding to implement National UN-REDD Programmes.¹³⁵⁰ UN-REDD has noted that, in 2013, it intends to mobilize additional resources, and broaden its membership due to growing demand.¹³⁵¹

¹³⁴⁷ The UN-REDD programme launched at the 2007 COP in Bali and was set up in 2008 with initial funding from the Government of Norway. UN-REDD program seeks to reconcile action on the contribution of GHG emissions from deforestation in developing countries with development needs in the same countries. While the COP noted that, “the needs of local and indigenous communities should be addressed when action is taken to reduce emissions from deforestation and forest degradation in developing countries.”¹³⁴⁷

¹³⁴⁸ UN-REDD is led by the UNDP, which draws on its network of 135 UNDP country offices to provide expertise in local capacity development and implementation support.

¹³⁴⁹ “About REDD” *UN-REDD Programme*, access at: <http://www.un-redd.org/aboutredd/tabid/582/default.aspx> (last accessed: 26 July 2013).

¹³⁵⁰ These programmes, supported by global activities designed to develop and share knowledge, include 12 Latin American countries, including Bolivia, Ecuador, Panama, and Paraguay. See “Support to Partner Countries.” *UN-REDD Programme*, http://www.un-redd.org/Partner_Countries/tabid/102663/Default.aspx (last accessed: 26 July 2013).

¹³⁵¹ UN-REDD recently announced a contribution of US \$30 million by the Government of Norway in supporting the second phase (2012-2015) of the UN-REDD National Programme in Vietnam, building on its success with regard to benefit-sharing, stakeholder engagement (including FPIC). In <http://climate->

UN-REDD is committed to: 1) Drafting national REDD+ strategies, implementation frameworks, as well as the REDD+ Partnership. Partnerships with local authorities and CSOs provide a means for coordinating REDD+ readiness, while linking national and international stakeholder engagement; 2) developing and supporting transparent and accountable guidelines, standards, and procedures for stakeholder engagement (e.g. indigenous peoples, forest-dependent communities, and CSOs), across national and international REDD+ processes.¹³⁵² This must be carried out in accordance with a HRBA that fulfills the requirements set forth in UNDRIP, UN Development Group Guidelines on Indigenous Peoples' issues, and ILO Convention No. 169, as well as other UN conventions and declarations, and safeguards articulated under UNFCCC negotiations; 3) Supporting the application of the UN-REDD Programme Operational Guidance¹³⁵³; developing guidelines, as well as supporting countries in applying and operationalizing FPIC; 4) collaborating with FCPF and FIP to harmonize and align stakeholder engagement guidelines, standards and operational procedures, to ensure the coherent implementation of REDD+ actions; analysis and awareness raising of national and international responsibilities with regard to participatory rights in the context of REDD+.

In order to be eligible for UN-REDD financing, national and international activities must support stakeholder engagement in national readiness and REDD+ processes. These must be in accordance with UN-REDD Operational Guidance and social standards, REDD+ safeguards arrangements, as well as commitments by states to strengthen the national application of existing rights, conventions and declarations. UN-REDD partners – the UNDP, UNEP, and FAO – aim to provide a solid framework for ensuring the respect and recognition of indigenous peoples' rights across REDD+ initiatives, as well as in dialogues between states, indigenous peoples, indigenous organizations, other forest dependent communities, local communities, private actors, civil society actors, and other stakeholders. UN-REDD is committed to UNDRIP, as well as in facilitating stakeholder engagement. Moreover, The Guiding Principles for the UN-REDD Programme on the Right of Indigenous Peoples and Other Forest Dependent Communities state that, “[a]ll UN-REDD Programme activities, particularly those that may potentially impact Indigenous Peoples and other forest dependent communities, must follow a human rights based approach and must adhere to the UNDRIP, the UNDG Guidelines on Indigenous Peoples' Issues, and the ILO. 169.”¹³⁵⁴ Furthermore, the UNDP derives its policy on indigenous peoples from its engagement with indigenous peoples at the country-level. Its objectives include: i) to provide an enabling environment that promotes

l.iisd.org/news/un-redd-announces-norway%E2%80%99s-support-to-viet-nam%E2%80%99s-redd-programme/.

¹³⁵² This includes supporting representatives to the UN-REDD Programme Policy Board in fulfilling their responsibilities (e.g. communicating with constituents, sharing outcomes of meetings, soliciting input). Stakeholder engagement is crucial for the success of REDD+ programmes, especially with regard to: MRV, governance, and equitable benefit sharing.

¹³⁵³ During its Quick Start phase, UN-REDD developed Operational Guidance on the Engagement of Indigenous Peoples and other Forest Dependent Communities. These were built on existing UN policies and guidelines (e.g. participation, transparency, and accountability). Additionally, in accordance with UNDRIP Article 19, UN-REDD has developed guidelines for FPIC provide an effective recourse mechanism for participating stakeholders.

¹³⁵⁴ UN-REDD Programme. (2009) "UN-REDD Programme Operational Guidance: Engagement of Indigenous Peoples & other forest dependent communities", 7.

indigenous peoples' participation in all decision-making levels; ensures the co-existence of their economic, cultural, and socio-political systems with others; and develops the capacity of Governments to build more inclusive policies and programmes; and ii) to integrate indigenous peoples' perspectives and concepts of development into UNDP work. While UN-REDD encourages developed countries and companies within them to invest in the preservation of developing countries' forests, it has few mechanisms and safeguards for the inclusion of local populations, who rely on these forests for their livelihood, to participate in decision-making.¹³⁵⁵

6.2.1.2. FCPF

The Forest Carbon Partnership Facility (FCPF), the World Bank's key mechanism for promoting REDD+, aims to enhance REDD+ readiness and produce information for a new climate agreement through its pilot period. During this period it intends to utilize its Readiness Mechanism to build capacity¹³⁵⁶ for REDD+.¹³⁵⁷ The FCPF is utilizing Strategic Environmental and Social Assessment (SESA) to raise attention to and integrate environmental and social considerations into REDD+ Readiness by involving stakeholders, as well as ensuring that REDD+ policies are consistent with the wider agreement in the Development Assistance Committee on safeguards in strategic planning initiatives.¹³⁵⁸ This is achieved by combining analytical and participatory approaches for “(i) identifying and prioritizing key environmental and social issues, assessment of policy, institutional and capacity gaps to manage these priorities and recommendations, and (ii) preparing an Environmental and Social Management Framework (ESMF), a framework to avoid and manage environmental and social risks and to mitigate potential adverse impacts, consistent with World Bank Safeguard policies.”¹³⁵⁹ The first Global Dialogue between indigenous peoples and the FCPF was organized in Panama (2011), where the Guna Yala Action Plan was adopted with a set of demands relating to participation and the respect of indigenous peoples rights (UNDRIP; FPIC; rights to land, territories, and resources, etc.) across FCPF actions.

The WB has developed ten safeguard policies – designed to avoid, mitigate, or minimize adverse impacts by WB projects – that provide guidelines both for the WB and borrowing countries for identifying, preparing, and implementing Bank-financed programs and projects. Particularly relevant WB policies include: policies on Environmental Assessment (OP/BP 4.01), Natural Habitats (OP/ BP 4.04), Forests (OP/BP 4.36), Involuntary Resettlement (OP/BP 4.12), and Indigenous Peoples (OP/ BP 4.10)^{1360 1361}.

¹³⁵⁵ Caesens, Elisabeth, and Maritere Rodriguez. (2009) *Climate change and the right to food: a comprehensive study*. Berlin: Heinrich-Bell-Stiftung, 17.

¹³⁵⁶ For example, it supports countries in estimating existing carbon in their forests (the national forest carbon stock), as well as in identifying sources of carbon emissions from forests.

¹³⁵⁷ As a result, the FCPF has assisted 37 developing countries, in tropical and sub-tropical regions, prepare for future REDD+ programmes.

¹³⁵⁸ Moss, Nicholas, and Ruth Nussbaum. (2008) "A Review of Three REDD+ Safeguard Initiatives", UN-REDD Programme and FCPF, 8.

¹³⁵⁹ Ibid 7-8.

¹³⁶⁰ As noted in the section on Indigenous rights, WB OP 4.10 “aims to ensure that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples.” Albeit a lower standard than the protections UNDRIP, it particularly emphasizes respect for the knowledge, rights of indigenous peoples, as well as their full and effective participation. “The policy calls for the recipient country

However, since these policies primarily apply to WB and FCPF activities operating on project-based lending, there is very little room for strategic planning, challenging the REDD+ Readiness Planning process as whole.¹³⁶²

Moreover, under the FCPF, activities affecting indigenous peoples fall under WB Operational Policies. As outlined in Section 2.5. Indigenous Peoples Rights in International Law, Operational Policy 4.10 (OP 4.10) aims to ensure the development process of REDD+ projects “respects the dignity, human rights, economies, and cultures of indigenous peoples.” According to OP 4.10, consistent with the Cancun Decision 1/CP.16, the WB only provides financing in cases where Free, Prior and Informed Consultation, as opposed to consent, results in *broad community support* to the project by the affected indigenous peoples before the Bank agrees to funding. However, it does not expressly mandate FPIC if the country has ratified ILO Convention No. 169 or adopted national legislation on FPIC, or the WB works on a project with a development partner who expressly applies their FPIC principles. The Bank has noted that OP 4.10 enables it to “to operate in a manner that can be considered substantially equivalent to the principles of FPIC.”¹³⁶³ Moreover, the *Common Approach on Environmental and Social Safeguards for Multiple Delivery Partners* provides “that if an organization other than the WB is the Delivery Partner in the FCPF and ‘if the environmental and social safeguard policies and procedures of the DP are more stringent and/or protective than those of the WB, the DP shall apply its policies and procedures to activities.’”¹³⁶⁴ However, as noted in Section 2.5. Indigenous Peoples Rights in International Law, many indigenous peoples, in particular, have been unhappy with the FCPF and the WB’s policy regarding FPIC, stating that the WB has improperly consulted forest peoples, ignoring internal safeguard policies, and FCPF rules.¹³⁶⁵

to engage in a process of free, prior, and informed consultation, and the Bank provides financing only where free, prior, and informed consultation results in broad community support for the project by the affected Indigenous Peoples. Where under national law or practice the FPIC standard has been adopted, the said standard will also be applied. The Policy includes measures to: avoid potentially adverse effects on the Indigenous Peoples’ communities; or When avoidance is not feasible, minimize, mitigate, or compensate for such effects. Operations are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive.”

¹³⁶¹ Moss, Nicholas, and Ruth Nussbaum. (2008) "A Review of Three REDD+ Safeguard Initiatives", UN-REDD Programme and FCPF, 6.

¹³⁶² Moss, Nicholas, and Ruth Nussbaum. (2008) "A Review of Three REDD+ Safeguard Initiatives", UN-REDD Programme and FCPF, 7.

¹³⁶³ CIFOR. (2010) "Rights to forests and carbon under REDD+ initiatives in Latin America", 3, access at: http://www.law.ku.edu/sites/law.drupal.ku.edu/files/docs/tribal_law_conference/abate.pdf (last accessed: July 25, 2013).

¹³⁶⁴ Transfer Agreement, Readiness Fund of the Forest Carbon Partnership Facility, 3, access at: http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/SDN/2012/08/21/F0171149B6BCFE8985257A6100649F85/1_0/Rendered/PDF/RAD1479360239.pdf (last accessed: July 25, 2013).

¹³⁶⁵ “According to these policies, the World Bank is obliged to take into account the need for effective participation of forest dependent indigenous peoples and forest dwellers in all decisions that may affect them. Their rights guaranteed under national law and international obligations (including human rights treaties and other agreements like UNDRIP) should be respected.”

6.2.2. REDD+ Partnership

France and Norway temporarily established the REDD+ partnership (2010-2012) with the aim of rapidly launching REDD+ efforts and "...serving as an interim platform for the Partners to scale up REDD+ actions and finance, and to that end to take immediate action, including improving the effectiveness, efficiency, transparency and coordination of REDD+ initiatives and financial instruments, to facilitate among other things knowledge transfer, capacity enhancement, mitigation actions and technology development and transfer."¹³⁶⁶ To date, 75 states (including Finland) have joined this partnership tackling the following: "(1) a database of REDD+ financing, actions and results to improve the transparency and coordination of REDD-Plus actions and support, (2) an analysis of financing gaps and overlaps, (3) a discussion on effectiveness of multilateral REDD+ initiatives, (4) sharing of lessons and best practices, and facilitation of cooperation, and (5) building capacity of REDD-Plus institutions."¹³⁶⁷ The Partnership conducted a review of its achievements in May 2012. **Despite some criticism¹³⁶⁸, the Partnership has been regarded as useful means of maintaining momentum and establishing readiness on a global scale. Although the Partnership will either be replaced or folded into a UNFCCC mechanism, the Doha Declaration (2012) extended its mandate to continue until 2015. The new mandate and work programme is to be developed in 2013 and 2014 with many suggesting that the partnership focus on concrete and practical activities whereby the focus is shifted "to unlocking and scaling up finance, providing tailored technical assistance to countries and facilitating on-the-ground interchanges among Parties, field practitioners and experts on critical issues."**¹³⁶⁹ Partners have provided comments for a second draft of the 2013 and 2014 REDD+ Partnership Work Programme and Budget.¹³⁷⁰

¹³⁶⁶ Countries attending the International Conference on the Major Forest Basins (March 2010), hosted by the Government of France, agreed to what would become the REDD+ partnership, "a global platform for organizing action to enable effective, transparent and coordinated fast action on reducing greenhouse gas emissions from deforestation and forest degradation in developing countries."¹³⁶⁶ The partnership was launched in Norway in May 2010 with an agreed-upon framework for the rapid implementation of measures for reducing deforestation. (REDD+ Partnership Document, 2010) <http://reddpluspartnership.org/73855/en/>.

¹³⁶⁷ See REDD+ Voluntary Data Base for Information on funding on REDD+ financing, actions, and results as reported to the REDD+ Partnership. In La Vina, Antonio GM, Leticia Labre, Lawrence Ang, and Alaya de Leon. (2012) "The Road to Doha: The future of REDD-Plus, agriculture, and land-use change in the UNFCCC" (Working Paper), Foundation for International Environmental Law and Development, 8, access at: http://www.field.org.uk/sites/field.org.uk/files/papers/la_vina_et_al_doha_redd_agriculture_lulucf_nov_12.pdf (last accessed: July 23, 2013).

¹³⁶⁸ Criticism has been directed at the funds (USD \$4 billion) pledged and utilized between 2010 and 2012 to fast-start the partnership.

¹³⁶⁹ La Vina, Antonio GM, Leticia Labre, Lawrence Ang, and Alaya de Leon. (2012) "The Road to Doha: The future of REDD-Plus, agriculture, and land-use change in the UNFCCC" (Working Paper), Foundation for International Environmental Law and Development. Access at: http://www.field.org.uk/sites/field.org.uk/files/papers/la_vina_et_al_doha_redd_agriculture_lulucf_nov_12.pdf (last accessed: 23 July 2013).

¹³⁷⁰ The final draft will soon be available for approval.

6.2.3. REDD+ Financing

Pilot programmes – testing out different means of financing REDD+ – are key to the decision on how the scheme will be financed in the future. It is here that participatory rights are particularly important. It must also be noted that indigenous peoples have continually held global meetings to develop and agree upon key positions and strategies regarding REDD+ financing.¹³⁷¹ While current costs – incurred in drafting REDD+ programmes, enhancing readiness, and initial implementation – are mostly covered by development cooperation funds, the long-term goal includes the establishment of a market-driven financing mechanism that is supported by public funds. Several international organizations – the FCPF and FIP, as well as UN-REDD – have set up programs and funds that intend to support REDD+. For instance, the FCPF includes the Readiness Fund (with approximately US \$260 million), which provides countries with grant financing to develop their national REDD+ strategies, as well as putting in place systems and institutions for implementing such strategies. Meanwhile, FIP aims to fund activities to promote and support sustainable forest management and afforestation.¹³⁷² According to the REDD+ Database, REDD+ mechanisms currently hold \$5.35 billion in public funding (committed) and \$2.24 billion (acknowledged), excluding a Norwegian and UK pledge amounting to \$500 million each. Finland's first contribution to REDD+ has declined since its first contribution in 2007. Norway continues to be the first and largest donor of UN-REDD.¹³⁷³ Other key donors include Denmark¹³⁷⁴, Spain¹³⁷⁵, Japan¹³⁷⁶, and the European Commission¹³⁷⁷. In addition, the Green Climate Fund (GCF) will serve as an operating entity of the financial mechanism of the UNFCCC, supporting initiatives in developing countries relating to mitigation. Finland should, thus, keep an eye on development in this area.

6.3. Participation and Decision-Making

Well-designed policies and safeguards, linked to the long-term needs of various stakeholders who may be affected by REDD+ are paramount and must consider: social and environmental trade-offs and opportunity costs of retaining *versus* restoring forests for indigenous peoples and local communities; the implementation of social and environmental safeguards; and enhancing REDD+ benefits (e.g. conserving forest biodiversity, water regulation, soil conservation, etc.). The primary means of ensuring the quality and accuracy of the REDD+ program performance assessment is through the full

¹³⁷¹ Seymour, Frances. (2010) "Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs", 223; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹³⁷² FIP continues to receive funding from donor governments since the mid-2009.

¹³⁷³ Having committed US\$ 52.2 million for 2008-2009, US\$31 in 2010, and at least US\$40 million for 2011-2012.

¹³⁷⁴ Denmark committed US\$2 million in June 2009 and US\$6 million in November 2010.

¹³⁷⁵ Spain pledged US\$20.2 million over a period of three years, in 2009, and further committed US\$1.4 million in November 2010.

¹³⁷⁶ Japan has committed US\$3 million for the UN-REDD Global Programme.

¹³⁷⁷ The European Commission pledged US\$14 million.

and effective participation of rights holders and stakeholders in the assessment process. However, it is important that indigenous peoples and forest-based communities not only have a voice *when* they have been affected.¹³⁷⁸ The role of procedural rights becomes a key issue when examining how international regulation is implemented on a national and sub-national level.¹³⁷⁹ There is, thus, a clear need to institutionalize the effective participation of indigenous peoples and local communities by ensuring their representation in sub-national and national REDD+ bodies and in the programme cycle of REDD+ – from design to implementation, monitoring, reporting and evaluation stages.

Participation in decision-making can be improved via decentralized forest management (to local governments) and the development and implementation of REDD+ actions. REDD+ aims to take a decentralized approach in three regards: 1) design process; 2) the protection of local peoples from exploitation and abuse via multiple checks and balances that help guarantee basic human rights, procedural equity, and appeal processes; and 3) decision-making on implementation and benefit allocation.¹³⁸⁰ The success of REDD+ is, thus, determined by: 1) measurable, reportable, and verifiable forest carbon estimates; and 2) FPIC, participatory rights under national REDD+ policies and measures, as well as no corruption. Additional aspects include access to information¹³⁸¹ and state obligations under international law that require REDD+ countries to meet higher standards of participatory decision-making. These include the provisions of the Cancun Agreements, requiring REDD+ participating countries to develop information systems on REDD+ safeguards; the Aarhus Convention, which requires signatories to promote its principles in international negotiations, as they relate to the environment; as well as the Anchorage Declaration (2009), which states that:¹³⁸² “All initiatives under REDD must secure the recognition and implementation of the human rights of indigenous peoples, including security of land tenure, ownership, recognition of land title according to traditional ways, uses and customary laws and the multiple benefits of forests for climate, ecosystems, and Peoples before taking any action.”¹³⁸³ Moreover, most European governments, including Finland, are obliged to incorporate procedural rights in negotiations concerning REDD.¹³⁸⁴

¹³⁷⁸ Stakeholder consultation with Deborah Delgado Pugley. Interview with the author.

¹³⁷⁹ The full and effective participation of indigenous peoples and other forest-based communities may be achieved via the following steps: in defining desired outcomes of consultation; developing a consultation and participation plan, as well as endorsement through a national stakeholder workshop; selecting consultation and outreach methods; defining issues to consult on; identifying stakeholder; establishing grievance and redress mechanisms; conducting consultations; analyzing and disseminating results.

¹³⁸⁰ Larson, Anne M, and Jesse C Ribot. "Lessons from forestry decentralization", Chapter 14, 175 and 181, access at: http://www.cifor.org/publications/pdf_files/Books/BAngelsen090214.pdf (last accessed: 26 July 2013).

¹³⁸¹ Information should include: a balanced treatment of potential positive and negative impacts; assessment of costs and benefits; alternative and outcomes of different scenarios, and information on community's legal rights and legal implications of the proposed project (e.g. implications for land/resource rights, status of carbon rights).

¹³⁸² Seymour, Frances. (2010) "Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs", 224; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹³⁸³ Lang, Chris, and 4th May 2009. "Indigenous Peoples reject carbon trading and forest offsets." *REDD-Monitor*, access at: <http://www.redd-monitor.org/2009/05/04/indigenous-peoples-reject-carbon-trading-and-forest-offsets/> (last accessed: 26 July 2013).

¹³⁸⁴ Seymour, Frances. (2010) "Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs", 14, In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

However, the role of procedural rights has been a contentious issue. While the discourse surrounding participation has gained traction, it is still questionable to what extent it is actually being implemented successfully in existing REDD+ processes. Concerns for the participation and rights of indigenous and forest-based communities have primarily been driven by international NGOs and national civil society organisations with the fear that existing systems or preserving forests will not be recognized under REDD+ or that financial benefits will be retained by states themselves.¹³⁸⁵ There are also disagreements as to how inclusive increased participation in REDD+ decision-making processes – the creation of invited spaces for various stakeholders to interact – have been. Is it merely symbolic or does it successfully engage local communities at various levels? Furthermore, it has been noted that little attention is being given to the underlying drivers of deforestation (e.g. macro-economic drivers) – detached from climatic core objectives.¹³⁸⁶

6.3.1. Women & REDD

Gender considerations and women's active participation in REDD+ are paramount as women play a particularly important role in conserving and restoring forests and must be advocated for across forest and land tenure issues, especially in preventing mono-cropping or deforestation.¹³⁸⁷ However, as in other areas, gender inequality continues in forest management despite long-standing conventions, treaties, and other instruments. Women and men often play different roles with regard to forest management (e.g. planting, maintaining). For example, while men are "likely to be involved in extracting timber and non-timber forest products (NTFPs) for commercial purposes", women "typically gather forest products for fuel, fencing, food for the family, fodder for livestock and raw materials to produce natural medicines, all of which help to increase family income."¹³⁸⁸

Current REDD+ initiatives may further exacerbate inequality regarding women's access and control over land, forests, and natural resources. This is, in part, because current REDD+ architecture focuses on the link between carbon credits and the reduction of deforestation, which is particularly problematic because women are less likely to be responsible for deforestation and forest degradation in the first place. In addition, women often have no ownership rights, making them ineligible to receive carbon credits or other benefits from REDD+. The gendered dimension of property and tenure rights is complex (e.g. distinctions between men and women's access to knowledge of the forest estate, distinctions between tenurial ownership to particular resources [e.g. trees and species]) – and mediated by legal constructs (including international, customary and statutory laws, traditional access, and project-based rules) that vary regionally and are often broadly tied to social, economic, and political equity constructs.¹³⁸⁹ However, tenure rights and rights

¹³⁸⁵ Angelsen, Arild. (2012) *Analysing REDD+: challenges and choices*. Bogor Barat: Center for International Forestry Research, 48.

¹³⁸⁶ Ibid 43.

¹³⁸⁷ Stakeholder Consultation with Deborah Delgado Pugley. Interview with the author.

¹³⁸⁸ Aguilar, Lorena. "Establishing the linkages between Gender and Climate Change Adaptation and Mitigation", in Dankelman, Irene. (2011) *Gender and Climate Change*, Routledge,

¹³⁸⁹ UN-REDD Programme (2011), "The Business Case for Mainstreaming Gender in REDD+", UNDP, UNEP, and FAO, 25.

and responsibilities in controlling, accessing, and managing resources are “key to understanding local social contexts, perceptions, and concerns.”¹³⁹⁰ There are, thus, concerns that REDD+ may close traditional or customary tenure rights to local communities, especially poor women.¹³⁹¹ In Indonesia, for example, REDD+ projects are instituted before competing land claims have been settled, thus, preventing any opportunity for community consultation or consent.¹³⁹² This has been highlighted by a USAID report, which has identified further areas of concern regarding women’s rights in Asia in the context of REDD+. This includes their right to own and control land, as well as their exclusion from benefit sharing for REDD+ payments.¹³⁹³ Consequently, “land tenure and ownership have been at the core of the ‘No Rights, No REDD’ argument.”¹³⁹⁴

However, women and gender issues are often left out of REDD+ participatory schemes. This is, in part, because REDD+ policy-makers and programme staff lack knowledge on gendered dimensions of forest-based resource use, needs, access, and knowledge. In Nepal, for example, NGO workers asked a newly formed Community User Forest Group (CUFG) to include women in decision-making. In response, the CUFG argued that its men were already representing women’s interests.¹³⁹⁵

Building on the Section 2.6.6. Intersectionality: The Role of Indigenous Women, a particular focus must also be placed on the role of indigenous women in existing and potential REDD+ schemes.¹³⁹⁶ The role of indigenous women becomes particularly important, even problematic, when women’s property rights are provided through secure titles to forest resources, thus, problematizing indigenous peoples’ ability to maintain collective control over their territories.¹³⁹⁷ Thus, a framework for women’s property rights

¹³⁹⁰ UN-REDD Programme (2011), “The Business Case for Mainstreaming Gender in REDD+”, UNDP, UNEP, and FAO, 25; A report produced by USAID, for example, identified areas of concern with regard to REDD+ and women’s rights in Asia. These included their right to own and control land, as well as their exclusion from benefit sharing for REDD+ payments. Gurung, Dr. Jeannette, et al., “USAID Getting REDD+ Right for Women : An Analysis of the Barriers and Opportunities for Women’s Participation in the REDD+ Sector in Asia” 11-13 (2011), access at: http://transition.usaid.gov/our_work/cross-cutting_programs/wid/pubs/Gender_REDD+_Asia_Regional_Analysis.pdf (last accessed: 31 March 2013).

¹³⁹¹ UN-REDD Programme (2011), “The Business Case for Mainstreaming Gender in REDD+”, UNDP, UNEP, and FAO, 25.

¹³⁹² Friends of the Earth International, “In the REDD: Australia’s Carbon Offset Project in Central Kalimantan”, 16-17, (2011), access at <http://www.foei.org/en/resources/publications/pdfs/2011/in-the-redd-australias-carbon-offset-project-in-central-kalimantan> (last accessed: 31 March 2013) 185.

¹³⁹³ Gurung, Dr. Jeannette, et al., “USAID Getting REDD+ Right for Women : An Analysis of the Barriers and Opportunities for Women’s Participation in the REDD+ Sector in Asia” 11-13 (2011), access at: http://transition.usaid.gov/our_work/cross-cutting_programs/wid/pubs/Gender_REDD+_Asia_Regional_Analysis.pdf (last accessed: 31 March 2013).

¹³⁹⁴ UN-REDD Programme (2011), “The Business Case for Mainstreaming Gender in REDD+”, UNDP, UNEP, and FAO, 25.

¹³⁹⁵ Additionally, while the CUFG established regulations, including a rule that would only allow for the collection of dry biomass (a process primarily undertaken by women), women were not informed of the change in procedure. They, thus, continued collecting both dry and wet fuel wood for which they were, in turn, arrested. The effects of the arrests were, however, not only felt by the women themselves, but were also experienced by the family as a whole. In “What is REDD+? A Guide for Indigenous Communities” (3rd Edition), AIPP and IWGIA, 46-47.

¹³⁹⁶ Stakeholder consultation with Deborah Delgado Pugley. Interview with the author.

¹³⁹⁷ Gurung, Dr. Jeannette, et al., “USAID Getting REDD+ Right for Women : An Analysis of the Barriers and Opportunities for Women’s Participation in the REDD+ Sector in Asia” 11-13 (2011), 45, access at http://transition.usaid.gov/our_work/cross-cutting_programs/wid/pubs/Gender_REDD+_Asia_Regional_Analysis.pdf

that emphasizes individual rights to possess land over indigenous peoples' rights, could particularly lead to the loss of indigenous peoples land, thereby violating the rights of indigenous peoples, and indigenous women in particular. In this regard, participatory rights are particularly important as indigenous peoples' collective land holding is critical to sustaining cultural and spiritual traditions.¹³⁹⁸

6.3.2. Indigenous Peoples & REDD

There is a need for a contextual understanding of the effects that REDD+ schemes – linking climate change, forest-related issues, and indigenous peoples rights – have on indigenous peoples.¹³⁹⁹ Considering that at least 60 million indigenous peoples are dependent on tropical forests, making them key stakeholders in REDD+ processes,¹⁴⁰⁰ it is particularly important to include them in decision-making. There are two reasons for this: 1) existing threats (e.g. expansion of cattle ranching in Brazil) that can interact with climate change to produce severe and devastating impacts;¹⁴⁰¹ and 2) REDD+ schemes can provide indigenous peoples with both opportunities and threats. Indigenous peoples' rights, especially in the context of forestry, have historically been abused “by governments asserting claims over lands without formal title, and also by large logging companies, sometimes employing private militia...”¹⁴⁰² Consequently, joint decision-making approaches in designing and implementing REDD+ strategies may lead indigenous peoples to be more likely to trust that REDD+ schemes will not result in the loss of their lands and that such activities may, in fact, benefit them.¹⁴⁰³ Land demarcation for the purpose of participating in REDD+ programs is particularly fraught with risk for indigenous peoples. This is largely due to the break-up of collective land holdings and the issuing of titles to individuals by governments. With regard to indigenous peoples' territories, the main concern should be focused on the security of land titles and rights to land, the distribution of REDD+ benefits, and ensuring FPIC. The eligibility of indigenous territories for REDD+ must be considered as they often have a history of low

Analysis.pdf (last accessed: 31 March 2013). 182-183; African Union, “Framework and Guidelines on Land Policy in Africa” 23 (2009), <http://www.pambazuka.org/aumonitor/images/uploads/Framework.pdf>; access at: http://www.iucn.org/media/media_statements/?6573/Women-in-REDD-critical-for-climate-action (last accessed: 31 March 2013) 182.

¹³⁹⁸ Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II, doc. 56/09, ¶63-8, 2010.

¹³⁹⁹ This perspective on REDD is discussed in more detail in Long, Andrew, “Global Climate Governance to Enhance Biodiversity and Well-Being: Integrating Non-State Networks and Public International Law in Tropical Forests”, 41 *Envtl. L.* 95, 126-130 (2011); However, the net-benefit must be evaluated on a case-by-case basis by the communities themselves. 151.

¹⁴⁰⁰ World Bank Strategy, (2002) “Sustaining Forests: A Development Strategy”, 12.

¹⁴⁰¹ This is in line with Article 42 of UNDRIP, which states that, “the United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies [such as REDD+], including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”

¹⁴⁰² ICHRP Rough Guide 2008, p. 32.

¹⁴⁰³ Stakeholder consultation with Deborah Delgado Pugley. Interview with the author.

deforestation. This plays a particularly important role with regard to additionality¹⁴⁰⁴ requirements, which can prevent indigenous peoples from fully engaging in REDD+ processes. However, it has been noted that, “even where the indigenous territories cannot demonstrate additionality, they may be eligible to receive compensation for maintaining low historical deforestation rates as a measure to prevent leakage of deforestation from nearby areas that become governed by REDD+ agreements.”¹⁴⁰⁵

However, indigenous peoples ability to shape such decisions is largely based on their ability to participate in REDD+ decision-making – both at the international and national levels. Moreover, the terms of agreement must be legitimate according to indigenous peoples’ decision-making processes. On a national level, it has been noted that REDD+ schemes, must consider and properly address the following with regard to environmental issues and the rights of indigenous peoples and other forest-dependent communities:

- National strategies, plans, and implementation.
- Their full and effective participation in mechanisms and bodies relating to REDD+ (e.g. the development and application of national SIS, MRV, and reporting on non-carbon benefits, etc.).
- The strengthening of indigenous communities and organizations’ capacity to continue to promote and protect their rights.
- Gender aspects must be properly considered and women must participate equally to men.

Meanwhile, on a community-level, it is necessary to ensure that indigenous and other communities can properly assess the pros and cons of REDD+; and that community-based REDD+ (on the ground) is realized and recognized as a holistic approach to climate change mitigation, forest, and biodiversity conservation.

With regard to implementation, REDD+ projects must include a contextual analysis that enables FPIC by “tailoring each agreement to the specific circumstances of the tribes and lands involved.”¹⁴⁰⁶ Indigenous peoples have **largely** been **excluded** from UNFCCC negotiations on REDD+. This is, in part, due to their nearly non-existent role in UNFCCC decision-making, in general.¹⁴⁰⁷ “Indigenous REDD+”, the proposal for an alternative to traditional REDD+, emerged at COP16 in Durban with an emphasis on designing and ensuring that financial benefits from REDD+ projects flow directly to

¹⁴⁰⁴ See Doyle, Gavin. (2009) "Legal Frameworks for REDD - Additionality and Permanence", access at: http://www.theredddesk.org/sites/default/files/resources/pdf/2010/IUCN_ELC_2009_REDD-Legal-Frameworks_CHAPTER4_ADDITIONALITYPERMANENCE.pdf (last accessed: 23 July 2013).

¹⁴⁰⁵ Anderson, Nicholas, “REDDy or not? The Effect on Indigenous Peoples in Brazil of a Global Mechanism for Reducing Emissions from Deforestation and Degradation”, 2 *Journal of Sustainable Development* 18, 22 (2009), 174.

¹⁴⁰⁶ Van Dam, Chris, “Indigenous Territories and REDD in Latin America: Opportunity or Threat?”, 2 *Forests* 394-414, 408; (2011). 176.

¹⁴⁰⁷ Schroeder, Heike, “Agency in international climate negotiations: the case of indigenous peoples and avoided deforestation”, 10(4) *International Environmental Agreements: Politics, Law, and Economics*, 317-32 (2010). For example, Anderson, Nicholas, “REDDy or not? The Effect on Indigenous Peoples in Brazil of a Global Mechanism for Reducing Emissions from Deforestation and Degradation”, 2 *Journal of Sustainable Development* 18, 21 (2009).

indigenous communities and the ability of indigenous peoples to preserve forests and recognize that REDD+ must be implemented with clear assurances of land ownership in all REDD+ activities.¹⁴⁰⁸ This notion should, in fact, reflect the aim of REDD+:

- To establish an open, inclusive, and participatory consultation mechanism with indigenous peoples and local communities in the development of sub-national and national REDD+ policies and strategies, without preconditions; and information shall be freely available to them.
- To institutionalize the effective participation of indigenous peoples and local communities by ensuring their representation in sub-national and national REDD+ bodies and in the programme cycle of REDD+ from the design to implementation, monitoring, reporting and evaluation stages. Indigenous peoples should choose representatives via their own selection mechanism.¹⁴⁰⁹

Indigenous peoples have, through various means, challenged this lack of inclusion in international processes, including REDD+. ¹⁴¹⁰ As a result, pressure to include indigenous peoples' participation in decision-making processes and respect for and recognition of indigenous peoples' rights and safeguards by "Indigenous REDD+" has increasingly gained traction. In line with this, Wessendorf has noted that indigenous peoples' representatives have been at the forefront of advocacy work with the UNFCCC, leading to the broadening of the scope of REDD, as well as the inclusion of social and environmental safeguards in the Cancun agreement. ¹⁴¹¹ This agreement reflects that the participation of forest-dependent communities, particularly indigenous peoples, is essential for the success of REDD+. Furthermore, it recognizes that in order for this to be achieved, a rights-based approach must be applied. ¹⁴¹²

Lastly, REDD+ can provide significant benefits for indigenous peoples (e.g income streams). ¹⁴¹³ For example, "well-designed projects and measures may be able to use investor and government interest in REDD+ as an opportunity to develop broader 'co-benefits' as well." ¹⁴¹⁴ These include activities that provide access to financial resources that can help reduce poverty, improve livelihoods, enhance social public goods, and

¹⁴⁰⁸ "Coordinating Body of Indigenous Organizations of Amazon Basin (COICA): Alternative Indigenous REDD+: Territories of Harmonious Life to Cool the Planet", Durban Climate Change Conference, Press Briefing, UNFCCC Webcast (2011), http://unfccc4.meta-fusion.com/kongresse/cop17/templ/play.php?id_kongresssession=4324&theme=unfccc (last accessed: 29 March 2013).

¹⁴⁰⁹ "REDD+ and Indigenous Peoples: A Briefing Paper for Policy Makers" (2010), Asia Indigenous Peoples Pact (AIPP) and IWGIA, 13, access at: http://ccmin.aippnet.org/pdfs/REDD+_Policy_Makers_Briefing.pdf (last accessed: July 26, 2013).

¹⁴¹⁰ Seymour, Frances. (2010) "Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs", 223; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹⁴¹¹ Stakeholder consultation with Kathrin Wessendorf. Interview with author.

¹⁴¹² Ibid.

¹⁴¹³ For example, Anderson, Nicholas, "REDDy or not? The Effect on Indigenous Peoples in Brazil of a Global Mechanism for Reducing Emissions from Deforestation and Degradation", 2 *Journal of Sustainable Development* 18, 21 (2009).

¹⁴¹⁴ Abate, Randall. (2013) *Climate change and Indigenous peoples: the search for legal remedies*. Cheltenham, UK: Edward Elgar, 170.

strengthen the adaptive capacity of forest ecosystems and communities.¹⁴¹⁵ Moreover, REDD+ may allow indigenous peoples to balance the maintenance of traditional lifestyles with the need to generate income, enhance state interest in supporting the enforcement of indigenous exclusionary rights over their territories and facilitate the financial independence of tribes.¹⁴¹⁶ Although REDD+ may increase the income potential of forests for indigenous people seeking to maintain sustainable uses, REDD+ alone will not eradicate other pressures on forests (e.g. illegal loggers). Moreover, while some indigenous groups have welcomed REDD, others have denounced its potential impacts on local communities. For instance, the International Forum of Indigenous Peoples on Climate Change has stated:

“REDD will not benefit Indigenous Peoples, but in fact, it will result in more violations of Indigenous Peoples’ Rights. It will increase violation of our Human Rights, our right to our lands, territories and resources, steal our land, cause forced evictions, prevent access and threaten indigenous agricultural practices, destroy biodiversity and culture diversity and cause social conflicts.”¹⁴¹⁷

Issues regarding indigenous peoples in REDD+ will be further examined in the recommendations, below.

6.3.3. FPIC

As mentioned in the section on Indigenous Peoples’ Rights, FPIC¹⁴¹⁸, an old concept that is emerging with a body of contemporary norms and standards, particularly applies to potential changes (e.g. decisions, activities, projects, etc) in land, territory, and resource use that could impact the livelihood (e.g. cultural, spiritual, and physical sustenance) of indigenous peoples and local forest-based communities. It is also “increasingly recognized as a procedural standard to be achieved by governments and private corporations prior to the implementation of major infrastructure or extractive industry projects.”¹⁴¹⁹ This is, in part, because the adoption of procedures with respect to FPIC could be vital for ensuring permeance in REDD+ and help address the challenge of respecting the rights of all stakeholders.

In recognition of this, and driven by this mandate to support the implementation of UNDRIP, the UN-REDD Programme launched the UN-REDD Programme Guidelines on FPIC¹⁴²⁰ (January 2013), as well as an associated Legal Companion that outlines existing

¹⁴¹⁵ Ibid.

¹⁴¹⁶ Van Dam, Chris, “Indigenous Territories and REDD in Latin America: Opportunity or Threat?”, 2 *Forests* 394-414, 396; doi: 10.3390/f2010394 (2011), 401.

¹⁴¹⁷ Seymour, Frances. (2010) “Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs”, 219; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹⁴¹⁸ FPIC holds that potentially affected communities should have the right to withhold consent at key decision-making points prior to a throughout the activities.

¹⁴¹⁹ Seymour, Frances. (2010) “Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs”, 222-223; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹⁴²⁰ These Guidelines – outlining a normative, policy and operational framework for seeking and obtaining FPIC in the context of REDD+ – are the result of a two-year process consisting of consultations, analysis, pilot-testing, consensus-building and refinement around issues concerning FPIC (from concept to

international law and emerging State practices whereby FPIC is regarded as a legal norm that imposes both duties and obligations on states. UN-REDD guidelines are primarily utilized by partner countries – those with national programmes and those receiving targeted support – and apply to national level activities supported by UN-REDD, as well as to activities supported by its three UN partner agencies (FAO, UNDP, UNEP), when acting as Delivery Partners under the FCPF. UN-REDD guidelines outline the normative framework by which UN-REDD follows a HRBA; elaborate on the definition of FPIC, building on the definition endorsed by the UNPFII in 2005; and outline the operational framework by which UN-REDD partner countries seek FPIC (guidance on when it is required, who seeks consent, who gives consent, step for seeking FPIC from a community, guidance on establishing mechanisms to address grievances and monitoring compliance with standards, guidelines, and policies).

Despite the broad acceptance of its importance as an ongoing process of REDD+, there are difficulties, precisely in defining how the right to FPIC should be operationalized, thus, challenging its wider practical adoption. For instance, while FPIC has primarily been utilized in developing more focused projects (e.g. mining projects, dams, roads), its application in the context of REDD+ decision-making (e.g. national REDD+ plans) is still somewhat unclear. Some limitations arise in advocating for a strong commitment from states to comply with FPIC. This includes tensions arising between UN-REDD and WB FCPF when both are operating within the same country. For instance, under the FCPF, FPIC is only applied in countries that have ratified ILO 169 and recognized FPIC within their national legislation. However, “[t]his may change once the joint Guidelines on Stakeholder Engagement in REDD+ Readiness are finalized and the issues are finalized and a decision is taken on how to deal with the fact that different agencies have different standards.”¹⁴²¹

FPIC becomes even more ambiguous when it no longer refers to consent, but consultation. From an institutionalist perspective, we may find tensions arising between policies of the World Bank’s FCPF and UN-REDD, which proposes a human rights—based approach to programming. While UN-REDD includes the “respect for the knowledge and rights of Indigenous Peoples to Free, Prior and Informed Consent (FPIC) and members of local communities” [emphasis added] as a key issue in REDD+ governance (UN-REDD 2010), the FCPF refers to FPIC as free, prior and informed consultation instead of consent.¹⁴²² Furthermore, the FCPF notes that, “local government eligibility to participate in REDD+ will be conditional on meeting specific standards and indicators of good governance.”¹⁴²³

implementation). These included consultations with indigenous peoples, forest dependent communities, international human rights and safeguards experts and REDD+ practitioners.

¹⁴²¹ “What is REDD+?: A Guide for Indigenous Communities” (3rd Edition), AIPP and IWGIA, 2012, 73.

¹⁴²² Hiraldo, Rocío, and Thomas Tanner. (2011) *The global political economy of REDD+: engaging social dimensions in the emerging green economy*. Geneva: UNRISD, 8.

¹⁴²³ Hiraldo, Rocío, and Thomas Tanner. (2011) *The global political economy of REDD+: engaging social dimensions in the emerging green economy*. Geneva: UNRISD, 7.

Implementation Arrangements	FPIConsent or FPIConsultation standards that should be followed	
	FPIConsultation Leading to Broad Community Support should be adhered to as per WB Operational Policy 4.10	Any national legislation adopting FPIConsent and Consultation
is the sole funder and the WB is in a country without national PICConsent as a standard	✓	
is the sole funder and the WB is in a country with national PICConsent as a standard		✓
sole funder and implementing without national legislation standard		
sole funder and implementing with national legislation adopting standard		✓
the Delivery Partner under the without national legislation as a standard		
the Delivery Partner under the with national legislation adopting standard		✓

6.4. Safeguards

“The design, implementation and monitoring of REDD+, must be in compliance with standards and norms set by international human rights and environmental law and international instruments such as the [UNDRIP].”¹⁴²⁴

The implementation and monitoring of REDD+ includes specific implementation principles and safeguards. These social and environmental safeguards – for which there is a growing need both at an international and national level – serve as the basis for ensuring that actors’ rights (e.g. indigenous peoples’ rights) and interests are addressed in REDD+ decision-making processes. Agreed upon at COP16 (2010), REDD+ Safeguards lay out seven principles that guide REDD+ actions in national contexts. These include, among others: transparent decision-making, participation by local and indigenous communities, and the protection of vulnerable people and ecosystems.

After a growing recognition of the need¹⁴²⁵ for effective social and environmental safeguards, various independent and voluntary international standards have been developed for national REDD+ programmes, which aim to develop a framework for identifying and reporting social and environmental benefits. These include: REDD+ SES¹⁴²⁶, the Strategic Environmental and Social Assessment (SESA) process of the Forest Carbon Partnership Facility (FCPF), the Social and Environmental Principles and Criteria (SEPC), and associated tools of the UN-REDD Programme, such as Benefits and Risks Tool (BeRT) and the Participatory Governance Assessment (PGA). SESA, BeRT, and PGA provide support for gap analysis, as well as the development of PLRs, institutions, processes, and procedures. Additionally, the REDD+ Safeguards Working Group (R-SWG)¹⁴²⁷, a network of northern and southern CSOs and indigenous groups, advocate on, among other things, REDD+ safeguards and SIS at the UNFCCC. While it may seem like there are numerous internationally developed instruments – proliferation, objectives, scope, and structure, may seem confusing – they may complement one another in developing country-level programmes.¹⁴²⁸

¹⁴²⁴ "IIPFCC SBSTA Opening Statement, Durban Climate Talks." *Climate Change Monitoring And Information Network*, access at: http://ccmin.aippnet.org/index.php?option=com_content&view=article&id=790:iipfcc-sbsta-opening-statement-durban-climate-talks&catid=1:news&Itemid=4 (last accessed: 26 July 2013).

¹⁴²⁵ This need has been reflected in the number of recent bilateral agreements in the context of REDD+. Moreover, the need for safeguards may help achieve broader performance parameters (e.g. livelihoods, community interests, rights and ecosystems) in the context of REDD+.

¹⁴²⁶ REDD+ SES, which will be examined in greater details below, supports the development of SIS.

¹⁴²⁷ R-SWG was previously known as the REDD+ SIS Working Group. "Throughout the year, the R-SWG has worked to build the international advocacy capacity of three southern CSO partners, namely, HuMa in Indonesia, Civic Response in Ghana, and CEMDA in Mexico, who can link their international activities with their safeguards work at the national level. The 16 core members of the R-SWG include the Ateneo School of Government (ASoG), which coordinates the group, ClientEarth, WRI, CIEL, Climate Justice Programme (CJP), Greenpeace, RFN, Tebtebba, Third World Network, Asia Indigenous Peoples Pact, Institute for Law and Environmental Governance and Indigenous Livelihoods Enhancement Partners in Kenya, and FECOFUN, and with its extended network comprises 25 organizations."

¹⁴²⁸ REDD+ Safeguards Working Group. (2013) "Non-Carbon Benefits in REDD+: Providing Incentives and Addressing Methodological Issues", Briefing Paper, 38th Session of the Subsidiary Body for Scientific and Technological Advice, UNFCCC, Bonn, June 3-14, 2013, 1.

Lessons learned from REDD+ schemes, to date, indicate that REDD+ safeguards must be embedded in existing and future national processes where global safeguards are adapted on a country-level. This provides countries with the flexibility to design safeguards that ensure that opportunities from, as well as social and environmental risks of REDD+ are addressed with the national context in mind. While country contexts differ, generic steps may be useful when developing country-level safeguards. These are comprised of three elements requiring crosscutting institutions and processes: 1) policies, law and regulations (PLRs)¹⁴²⁹; 2) a grievance and redress mechanism¹⁴³⁰; and 3) a safeguard information system (SIS)¹⁴³¹. Furthermore, MRV is important in conjunction with country-level safeguard systems.¹⁴³² In order to establish a safeguard system (including institutions, processes, and procedures necessary to operationalized them), states must go through a development process whereby SIS assess to which degree national laws, policies and programmes, related to REDD+, align with international standards (e.g. international commitments such as UNFCCC safeguards, those required by donors, development priorities, stakeholder concerns) and respect indigenous peoples' rights to land, territory, natural resources, and FPIC. Moreover, the SIS must also assess access to independent international and national recourse mechanisms. National safeguard groups, utilizing existing institutional arrangements¹⁴³³, help define multi-stakeholder processes, identify gaps, as well as monitor the progress of safeguard implementation.¹⁴³⁴ Moreover, the engagement of stakeholders who are most likely to be affected by REDD+ programs (e.g. indigenous peoples and local communities) must be engaged in discussing risks and safeguards at a country-level. This requires actors' ability to access to information, time, and resources. Furthermore, REDD+ discussions regarding both unresolved (e.g. MRVs, guidance on SIS, market and non-market approaches to REDD+) and new (e.g. institutional arrangements) issues should be streamlined in the REDD+ work stream. This would not only speed up progress, but would also allow for more efficient outcomes that incorporate lessons learned from REDD+ safeguards.

¹⁴²⁹ PLRs address potential risks associated with REDD+ projects.

¹⁴³⁰ This enables stakeholders, affected by REDD+ projects, to provide and receive feedback.

¹⁴³¹ SIS collect and provide information on how safeguards are addressed and respected.

¹⁴³² Moss, Nicholas, and Ruth Nussbaum. (2008) "A Review of Three REDD+ Safeguard Initiatives", UN-REDD Programme and FCPF, 19.

¹⁴³³ However, existing systems and institutions must be carefully assessed prior to project implementation in order to assess potential gaps and differing objectives.

¹⁴³⁴ Moss, Nicholas, and Ruth Nussbaum. (2008) "A Review of Three REDD+ Safeguard Initiatives", UN-REDD Programme and FCPF, 20.

6.4.1. REDD+ SES

REDD+ SES¹⁴³⁵ – principles, criteria, and indicators¹⁴³⁶ – that define high social and environmental performance were developed through a multi-stakeholder participatory process¹⁴³⁷ facilitated by CARE International and the Climate, Community, and Biodiversity Alliance (CCBA) with a majority of the Standards Committee representing the five countries developing REDD+ programs. REDD+ SES serve as a tool – consistent with *Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision*¹⁴³⁸ agreed to at COP17 – for states to address the REDD+ safeguards listed in Annex 1 of the Cancun agreement.¹⁴³⁹ REDD+ SES, to be used as a standard for government-led programs at multiple levels (e.g. national, state, provincial, etc.), was published for application in pilot countries in 2010.¹⁴⁴⁰ These safeguards – versatile in their ability to be tailored specifically to each country, but also be used consistently across countries – provide a comprehensive framework of key issues and elements of quality set to go beyond minimum safeguards.¹⁴⁴¹

On a global level, REDD+ SES aim to support government-led REDD+ programs and build support for a more effective, equitable, and sustainable approach to REDD+ whereby participating countries can benefit by gaining greater recognition for high social and environmental performance that is achieved both within the home country, as well as in the international community.¹⁴⁴² It provides a list of principles, criteria, and indicators for country-level REDD+ safeguard mechanisms, as well as a 10-step process on how it is to be applied (organized around three elements: governance, interpretation, assessment) to government-led programmes (at the national, state, or provincial level).¹⁴⁴³ One of its primary roles is providing a mechanism for state-led multi-stakeholder assessments of the

¹⁴³⁵ REDD+ SES is supported by the Climate Community Building Alliance and CARE.

¹⁴³⁶ Indicators are important references that must be adapted based on national circumstances. Country-level indicators for REDD+ SES can help support “awareness-raising, capacity building and consultations to enable effective stakeholder participation” in a country-specific context.

¹⁴³⁷ The inclusive process engaged government, NGOs, CSOs, Indigenous Peoples organizations, international policy and research institutions, as well as the private sector.

¹⁴³⁸ *Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16 (advance unedited version)*, access at: http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_safeguards.pdf (last accessed: 26 July 2013).

¹⁴³⁹ (UNFCCC decision 1/CP.16 appendix 1) (with the provision that REDD+ SES does not address issues related to accounting for greenhouse gas emissions); (UNFCCC Decision 12/CP.17)

¹⁴⁴⁰ “Guidelines for the use of REDD+ Social & Environmental Safeguards at the Country Level” (Version 2), 2, access at: http://www.redd-standards.org/files/pdf/redd-docs/Standards/REDD_SES_Guidelines_Version_2_-_16_November_2012.pdf (last accessed: 27 July 2013).

¹⁴⁴¹ “Guidelines for the use of REDD+ Social & Environmental Safeguards at the Country Level” (Version 2), 6, access at: http://www.redd-standards.org/files/pdf/redd-docs/Standards/REDD_SES_Guidelines_Version_2_-_16_November_2012.pdf (last accessed: 27 July 2013).

¹⁴⁴² To date, Ecuador, the State of Acre in Brazil, Nepal, the Province of Central Kalimantan in Indonesia and Tanzania have used REDD+ SES.

¹⁴⁴³ See: REDD+ Social & Environmental Standards, 2011, access at: http://www.careclimatechange.org/files/carbon/Using_REDD_SES_Nov2011.pdf (last accessed: 27 July 2013).

design, implementation and outcomes of REDD+ programs.¹⁴⁴⁴ This enables states to show how internationally and nationally defined safeguards are being addressed. Assessments are particularly important in maintaining support for REDD+ programs among stakeholders, including indigenous peoples and local communities, as well as national and international observers. Moreover, REDD+ SES can help support monitoring and reporting, as well as the development of a safeguard information system that can respond to UNFCCC guidelines and donor reporting requirements. The country-specific interpretation of REDD+ SES, and the multi-stakeholder process for developing country-level indicators¹⁴⁴⁵, complement other relevant frameworks, such as UNFCCC safeguards, donor safeguards, as well as other international commitments and the UN-REDD SEPC. They also support awareness raising, capacity building, and consultations among stakeholders. In addition, they refer to women nine times, as well as clearly support FPIC and other REDD-relevant indigenous peoples' rights obligations.¹⁴⁴⁶

6.4.2. NCBs

In order to enable broad participation, there is a need for a flexible international mechanism that can accommodate different means of achieving and paying for different results. Thus, in linking results to finance and assessing them as a part of a flexible mechanism, the link between safeguards, non-carbon benefits¹⁴⁴⁷, and the role of SIS must be considered.

Having recognized that safeguard implementation and SIS¹⁴⁴⁸ are minimum requirements, financing must be directed toward activities (e.g. improving governance) that enable carbon and non-carbon benefits.¹⁴⁴⁹ Addressing NCBs and Safeguards, central to the

¹⁴⁴⁴ "Guidelines for the use of REDD+ Social & Environmental Safeguards at the Country Level" (Version 2), 3, access at: http://www.redd-standards.org/files/pdf/redd-docs/Standards/REDD_SES_Guidelines_Version_2_-_16_November_2012.pdf (last accessed: 27 July 2013).

¹⁴⁴⁵ On a national level, a standards committee develops country-specific indicators that are then reviewed by an international standards committee, which aims to ensure consistency across countries. Governance, interpretation and assessment processes are also reviewed.

¹⁴⁴⁶ "Principle 3, Criteria 3.2, indicators propose the inclusion of gender-differentiated impacts in the participatory assessment and monitoring of the positive and negative impacts of REDD+; Principle 6, Criteria 6.2, identifies women as a marginalized and/or vulnerable group that should be represented. Principle 8 refers to CEDAW as one of the international conventions that REDD+ programmes should comply with, and Criteria 8.1.3, women's and other marginalized groups' rights are recognized and respected by REDD+ programmes."

¹⁴⁴⁷ NCBs, whose importance was first recognized at a UNFCCC meeting in Bangkok in 2012, include social, environmental and governance benefits.

¹⁴⁴⁸ The SIS monitors: 1) the implementation of policies, ensuring that no harm occurs; and 2) the results of implementing safeguards. "This second function of the SIS would overlap with assessing additional NCBs so they may be viewed as two sides of the same coin." In REDD+ Safeguards Working Group, "Providing Incentives for Multiple Benefits: Linking Finance, Results and Safeguards" (Discussion Paper), 18th Conference of the Parties UN Framework Convention on Climate Change, Doha, 26 November – 7 December, 2012, 2.

¹⁴⁴⁹ The language of UNFCCC REDD+ safeguards goes beyond the "doing no harm" approach and may, thus, result in NCBs. However, it must be noted that, to date, REDD+ financing has largely focused on establishing technical mechanisms for MRVs, which has drawn attention away from safeguards. For more information on results based payments see: REDD+ Safeguards Working Group, "Providing Incentives for Multiple Benefits: Linking Finance, Results and Safeguards" (Discussion Paper), 18th Conference of the Parties UN Framework Convention on Climate Change, Doha, 26 November – 7 December, 2012, 1-4.

REDD+ incentive structure and prerequisites for taking emission reduction removals (ERRs)¹⁴⁵⁰ permanent and sustainable (e.g. quality assurance), helps minimize risks and increase REDD+ effectiveness with regard to the quantity of ERRs realized.¹⁴⁵¹



Table 2: Illustrating the interdependence between NCBs, safeguards, finance and SIS/NFMS.

NCBs, embedded in UNFCCC REDD+ safeguards¹⁴⁵², not only address particular risks (e.g. “do no harm”), but also provide actions to “incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.”¹⁴⁵³ They also provide an opportunity to enhance positive incentive structures, such as the full and effective participation of stakeholders (e.g.

¹⁴⁵⁰ *Simplifying the Monitoring of ERRs (through proxies)*. Proxy indicators, used to measure results indirectly, may increase the flexibility of REDD+. According to the REDD+ Safeguards Working Group, “proxies can be closely linked to quantifying ERRs (e.g. area planted or conserved) or linked to an activity assumed to reduce emissions / increase removals (e.g. increasing the area of land managed by Indigenous Peoples).” However, there are both advantages and disadvantages to utilizing proxies. While the former would capture data as a part of a forest monitoring system that countries must develop under the requirements of the Cancun agreement, it also assumes the amount of carbon that is stored (in a given area) and deduces that conserving trees reduces/removes emissions. Meanwhile, the latter, combines an emission and social outcome, assuming that the outcome reduces/removes emissions and provides social benefits. In REDD+ Safeguards Working Group, “Providing Incentives for Multiple Benefits: Linking Finance, Results and Safeguards” (Discussion Paper), 18th Conference of the Parties UN Framework Convention on Climate Change, Doha, 26 November – 7 December, 2012, 3.

¹⁴⁵¹ There are challenges in *demonstrating actions through ERRs (only)*, including: monitoring behavioural change; implementing action; unexpected natural events that may mask ERRs; difficulty in measuring ERRs; and occurrences of ERRs with not action having been taken.

¹⁴⁵² These safeguards and NCBs, which cannot be separated, were agreed upon by the Parties in Cancun.

¹⁴⁵³ REDD+ Safeguards Working Group. (2013) “Non-Carbon Benefits in REDD+: Providing Incentives and Addressing Methodological Issues”, Briefing Paper, 38th Session of the Subsidiary Body for Scientific and Technological Advice, UNFCCC, Bonn, June 3-14, 2013, 2.

indigenous peoples and local communities) by implementing safeguard (d)¹⁴⁵⁴,” which is necessary to minimize risks associated with public rejection of REDD+.”¹⁴⁵⁵ Defining results — 1) results that are measured by quantifiable units against a baseline¹⁴⁵⁶; and 2) results achieved by pre-defined goals¹⁴⁵⁷ — ultimately affects eligible REDD+ actions, including the distribution of payments and incentives.

Various **systems for assessing NCBs**, as a part of REDD+ readiness, already exist.¹⁴⁵⁸ **REDD+ SES** has experience in monitoring and assessing safeguards and NCBs performance. Several countries have already implemented multi-stakeholder processes in defining indicators for assessing the social and environmental performance of REDD+ programs against the backdrop of REDD+ SES and criteria for safeguards and NCBs, developed via inclusive international consultation. Furthermore, “[t]he participatory process for using REDD+ SES identifies country-specific requirements for safeguards and priorities for NCBs, and enhances the quality and credibility of their monitoring and assessment.”¹⁴⁵⁹

In addition, SIS and National Forest Monitoring Systems (NFMS) serve as a basis and are crucial for assessing NCBs because they monitor and demonstrate that REDD+ activities have, in fact, “addressed and respected” the safeguards and may be integrated into results-based payments. The **link between NFMS and NCBs**, which plays a key role in monitoring and assessment (e.g. regarding the conversion of natural forests to plantations), was made at SBSTA discussions in Doha. Although the text is only a draft, it has been acknowledged that NFMS may “provide relevant information on how safeguards

¹⁴⁵⁴ UNFCCC Decision 1/CP.16, Annex I, para 2(d).

¹⁴⁵⁵ REDD+ Safeguards Working Group. (2013) “Non-Carbon Benefits in REDD+: Providing Incentives and Addressing Methodological Issues”, Briefing Paper, 38th Session of the Subsidiary Body for Scientific and Technological Advice, UNFCCC, Bonn, June 3-14, 2013, 2.

¹⁴⁵⁶ For example, “10 tons of carbon reduced, five hectares of tree planted, \$100 gained by a community.” Such rewards for particular types of behavior are currently used by many programmes in providing payments for ecosystem services (PES). In REDD+ Safeguards Working Group, “Providing Incentives for Multiple Benefits: Linking Finance, Results and Safeguards” (Discussion Paper), 18th Conference of the Parties UN Framework Convention on Climate Change, Doha, 26 November – 7 December, 2012, 1.

¹⁴⁵⁷ For example, “passing a law conserving 1 million hectares of forest.” Furthermore, the discussion paper notes that while this is “more difficult to quantify”, it is “still possible to monitor and assess, and is useful to support enabling activities or to reward desired outcomes more quickly.” In REDD+ Safeguards Working Group, “Providing Incentives for Multiple Benefits: Linking Finance, Results and Safeguards” (Discussion Paper), 18th Conference of the Parties UN Framework Convention on Climate Change, Doha, 26 November – 7 December, 2012, 1.

¹⁴⁵⁸ Monitoring may be simplified through the use of composite models for assessing performance across “all three categories of NCBs – governance, social, and environmental.” R-SWG, *Recommendations for Doha* (Doha, December 2012), <http://www.scribd.com/doc/113982787/Recommendations-for-Doha>; FERN, et al., *REDD+: An Incentive Structure for Long-Term Performance*, Discussion Paper (Bangkok, September 2012), <http://www.scribd.com/doc/138654169/REDD-An-Incentive-Structure-for-Long-Term-Performance>; REDD+ Safeguards Working Group. (2013) “Non-Carbon Benefits in REDD+: Providing Incentives and Addressing Methodological Issues”, Briefing Paper, 38th Session of the Subsidiary Body for Scientific and Technological Advice, UNFCCC, Bonn, June 3-14, 2013, 4.

¹⁴⁵⁹ “Ecuador, for example, is using lessons learned from first assessment using REDD+ SES to develop an SIS that includes safeguards and NCBs.” REDD+ Safeguards Working Group. (2013) “Non-Carbon Benefits in REDD+: Providing Incentives and Addressing Methodological Issues”, Briefing Paper, 38th Session of the Subsidiary Body for Scientific and Technological Advice, UNFCCC, Bonn, June 3-14, 2013, 4.

are being addressed.”¹⁴⁶⁰ Moreover, as the REDD+ Safeguards Working Group pointed out, “a number of existing international instruments to which many REDD+ countries are parties also incorporate provisions that are directly and indirectly related to REDD+, and have existing monitoring and reporting requirements that could be drawn on to provide information demonstrating safeguards implementation and NCBs from REDD+.”¹⁴⁶¹ Relevant information may also arise from the post-2015 development agenda.¹⁴⁶²

6.5. Conclusion

Since its inception, REDD+ has generated great interest as a possible means of strengthening community land and resource rights, empowering community institutions, increasing income through benefit-sharing, and supporting indigenous peoples’ and local communities’ forest stewardship activities. While the nascent state of REDD+ should, in theory, allow for the protection of environmentally based livelihoods of many indigenous groups, improve forest governance, and increase resource flows to poor rural communities, and provide enhanced biodiversity preservation; scepticism remains as to the risks, such as rewarding practices that may result in negative environmental and social externalities (e.g. biodiversity loss through monoculture tree planting or the prevention of subsistence activities by forest dwellers), that may come with existing REDD+ mechanisms.¹⁴⁶³ ¹⁴⁶⁴ It is not surprising that already marginalized groups, including women and indigenous peoples, have several reasons – ranging from land rights to forest conservation to centralized forest management – as to why they may feel particularly at risk.¹⁴⁶⁵

¹⁴⁶⁰ States of Acre and Amazonas in Brazil, Provinces of Central and East Kalimantan in Indonesia, Ecuador, Nepal, Guatemala, Mexico, Liberia, San Martin in Peru.

¹⁴⁶¹ These international agreements (and related reporting mechanisms) include, but are not limited to: reporting on National Biodiversity Strategy and Action Plans and the Aichi Targets under the Convention on Biological Diversity (CBD); the International Tropical Timber Agreement (ITTA); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the World Heritage Convention; the Millennium Development Goals (MDGs); the International Covenant on Civil and Political Rights (ICCPR); the International Labour Organisation Convention No. 169; the International Covenant on Economic Social and Cultural Rights (ICESCR); and the UN Convention on Elimination of All Forms of Racial Discrimination (CERD).

¹⁴⁶² *The Future We Want*, A/CONF.216/L.1*, paras 245-251, Rio +20 UN Conference on Sustainable Development, 19 June 2012.

¹⁴⁶³ Additional benefits may include contributions to conservation, sustainable management of forests, and the enhancement of forest carbon stocks (REDD+). Measures to prevent negative externalities are referred to as “safeguards” in REDD+ negotiations and literature while positive externalities are frequently called “co-benefits”. For an analysis of REDD+ design considerations related to these concerns, see Long, Andrew, “Global Climate Governance to Enhance Biodiversity and Well-Being: Integrating Non-State Networks and Public International Law in Tropical Forests”, 41 *Envtl. L.* 95 (2011). (3); Global Canopy Programme (updated – ongoing, 2009, 2nd ed.). Little REDD+ Book; Meridian Institute (2009). Reducing Emissions from Deforestation and Forest Degradation (REDD): An Options Assessment Report.

¹⁴⁶⁴ Measures to prevent negative externalities are referred to as “safeguards” in REDD+ negotiations and literature while positive externalities are frequently called “co-benefits”. For an analysis of REDD+ design considerations related to these concerns, see Long, Andrew, “Global Climate Governance to Enhance Biodiversity and Well-Being: Integrating Non-State Networks and Public International Law in Tropical Forests”, 41 *Envtl. L.* 95 (2011).

¹⁴⁶⁵ Moss, Nicholas, and Ruth Nussbaum. (2008) “A Review of Three REDD+ Safeguard Initiatives”, UN-REDD Programme and FCPF, 2-3.

Seymour notes that, “[a]s payments for conserving forests for carbon storage become increasingly likely, state and non-state actors alike will have strong incentives to passively ignore or actively deny the land and resource rights of indigenous, traditional and/or poor forest users in order to position themselves to claim compensation for forest stewardship in their stead.”¹⁴⁶⁶

REDD+ also bears the risk of causing social and environmental harm if its programmes only focus on reducing emissions.¹⁴⁶⁷ There has, for instance, been criticism of the fact that REDD+ does not protect forests that have already been successfully protected (e.g. forests conserved by indigenous peoples).^{1468 1469} This goes hand-in-hand with concerns expressed by the chief proponent of “Indigenous REDD+”, the Coordinator of Indigenous Peoples of the Amazon Basin (COICA) who has noted that REDD+ may, in fact, perpetuate the notion that **forests are nothing more than carbons sinks**, enabling the potential abuse (e.g. unequal arrangements) of indigenous populations through inequitable REDD+ arrangements. COICA has, thus, asserted that Indigenous REDD+ must restrict access to forests as holistic forest protection efforts may allow for the continuation of indigenous uses. Furthermore, it has been noted that this may suggest that REDD+ arrangements maybe remain outside international carbon markets in order to prevent profit motives that incentivize the exploitation of indigenous peoples.

Additional criticism includes the exclusion of various stakeholders from forest-policy decision-making at the national and sub-national level. Such critique is often accompanied by the need for protecting “internationally recognized rights and a greater voice in decision-making processes.”¹⁴⁷⁰ While REDD+ has aimed to tackle such criticism, the following concerns remain among indigenous peoples:

¹⁴⁶⁶ Seymour, Frances. (2010) "Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs", 219; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010; Abate, Randall S., "A Tale of Two Carbon Sinks: Can Forest Carbon Management Serve as a Framework to Implment Ocean Iron Fertilization as a Climate Change Treaty Compliance Mechanism?", 1 Seattle J. Envtl. L. 1, 6 (2011) (citing Food and Agriculture Organization and the Center for People and Forests, *Forests and Climate Change after Copenhagen: An Asia-Pacific Perspective* 6 (2011), available at http://recofte.org/site/filesadmin/docs/publications/The_Grey_Zone/2010/FcC-after-Copenhagen_3.pdf (last accessed 15 August 2012))

¹⁴⁶⁷ Moss, Nicholas, and Ruth Nussbaum. (2008) "A Review of Three REDD+ Safeguard Initiatives", UN-REDD Programme and FCPF, 3,

¹⁴⁶⁸ For example, since payments are provided for reducing emissions from deforestation and forest degradation, but not for maintaining forests, "...this opens up the possibility, for example, of logging an area of forest but compensating for the missions by planting industrial tree plantations somewhere." ¹⁴⁶⁸ "Enhancement of forest carbon stocks" could mean that the establishment of tree plantations is also considered an "enhancement of forest carbon stocks". Thus, the conversion of any land, including forests, is accepted, and may lead to the increased conversion of forests into tree plantations. This could, in turn, have serious consequences for biodiversity, as well as indigenous and other forest dependent communities.

¹⁴⁶⁹ Many people are not happy that the agreement mentions "conservation of forest carbon stocks", instead of "conservation of forests" or "conservation of natural forests". This reveals that the main concern of the UNFCCC is carbon, that forests are seen only as a "carbon store house" and are not appreciated for the many other values they have: for their biodiversity, the environmental services like regulating water flow, the local climate etc., or for the many resources and thus the livelihood they provide to indigenous communities and other forest dwelling communities.

¹⁴⁷⁰ For example, Johnstone, Naomi, "Indonesia in the 'REDD': Climate Change, Indigenous Peoples and Global Legal Pluralism", 12 *Asian-Pacific Law & Policy Journal* 93 (2010). 160.

- Fear that REDD+ could restrict indigenous traditional livelihood practices, the eviction of communities, and loss of land and resource rights due to the establishment of protected areas.
- A distinct difference between free, prior and informed consultation *versus* consultation.
- Inequitable benefit-sharing.
- A lack of coordination between actors, due to multiple implementation agencies, leading to large-scale duplication.
- National representation that is often dependent on NGOs.¹⁴⁷¹

REDD+ may, thus, facilitate the widespread violation of indigenous peoples' human rights – including collective rights, land rights, ownership rights to natural resources, as well as the right to self-determination.¹⁴⁷² Consequently, the Indigenous Peoples' Caucus, came to a consensus that, in the context of REDD, no rights for indigenous equal no REDD.¹⁴⁷³ Many forest-dependent communities and indigenous peoples are skeptical of REDD+ as it increases “the value of their property and effectively incorporat[es] tropical forests into the global economy”, risking “the loss of their lands, territories, natural resources and entire ways of life.”¹⁴⁷⁴ Land demarcation and limited land-use for the purpose of participating in REDD+ programs are particularly fraught with risk for indigenous peoples, especially indigenous women, because collective land holding is critical to sustaining cultural and spiritual traditions.¹⁴⁷⁵ Consequently, as noted earlier, the break-up of collective land holdings and the issuing of titles to individuals by governments are problematic.¹⁴⁷⁶ In addition, the human rights implications of agro-fuel development are profound for indigenous peoples and women, who risk being alienated from their land, mainly due to contested property rights.¹⁴⁷⁷ However, such social factors are usually not assessed before projects are initiated. Indigenous peoples and other forest-based communities are also concerned with the establishment of protected areas that may lead to their large-scale eviction, the loss of their land and resource rights, as well as their

¹⁴⁷¹ Stakeholder consultation with Deborah Delgado Pugley. Interview with the author.

¹⁴⁷² The UNHCHR has noted such concerns, recognizing that climate change may affect human rights. In line with this, the UNFCCC Cancun Agreements emphasized that Parties “should, in all climate change related actions, fully respect human rights.” Goldberg, Donald M, and Tracey Badua, “Do People have Standing? Indigenous Peoples, Global Warming, and Human Rights”, 1 Barry L. Rev. 59, 60 (2008). 178. Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights 39-41, 51-4, A/HRC/10/61 (15 January 2009); at 20-38. UN Framework Convention on Climate Change Conference of the Parties, 29 November-10 December 2010, “The Cancun Agreements: Outcome fo the work of the Ad Hoc Working Group on Long-term Cooperative Acction under the Convention”, ¶8, FCCC/CP/2010/7/Add.1 (15 March 2011)

¹⁴⁷³ See: <http://no-redd.com/un-redd-violates-right-to-free-prior-and-informed-consent/>

¹⁴⁷⁴ See Hunter, David, “Human Rights Implications for Climate Change Negotiations”, 11 Or. Rev. Int’l L., 331, 357 (2009)

¹⁴⁷⁵ Inter-American Commission on Human Rights, Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources, OEA/Ser.L/V/II, doc. 56/09, ¶63-8, 2010.

¹⁴⁷⁶ African Union, “Framework and Guidelines on Land Policy in Africa” 23 (2009), <http://www.pambazuka.org/aumonitor/images/uploads/Framework.pdf>, http://www.iucn.org/media/media_statements/?6573/Women-in-REDD-critical-for-climate-action (last accessed: 31 March 2013) 182.

¹⁴⁷⁷ Seymour, Frances. (2010) “Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs”, 220; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

traditional livelihood. The restriction of **indigenous peoples traditional land use** may also severely damage indigenous ways of life, even if they have legal access to forest areas. This is, in part, because limiting their access to REDD+ protected forest areas could impact their use of forest resources for subsistence needs.¹⁴⁷⁸ Furthermore, REDD+ processes that discourage traditional indigenous forest usage may, in fact, lead to dependence on REDD+ payments as an alternative to traditional activities and inhibit their right to self-determination.¹⁴⁷⁹ However, including indigenous peoples in decision-making can mitigate such issues.

A multi-stakeholder approach to REDD+ is said to ensure national consultation processes and decentralized governance that allows for, among other things, stakeholder participation and equitable benefit sharing.¹⁴⁸⁰ However, many organizations also regard this approach with skepticism, arguing that it opens up participation to the private sector.¹⁴⁸¹ For instance, concerns have risen out of fear that supposed forest management could undertake commercial logging operations on indigenous people's territories or in community forests. Consequently, numerous organizations call for the protection of both indigenous peoples' and local communities' procedural rights¹⁴⁸² – a contention in REDD+ negotiations.¹⁴⁸³

An additional risk includes the promise of financial benefits.¹⁴⁸⁴ Beyond government appropriation, there are further questions with regard to the distribution of funds among and within indigenous and non-indigenous communities. While one-time payments may increase governance risks for indigenous peoples, government intermediaries may lead to corruption. Furthermore, once benefits reach indigenous tribes, a further challenge includes ensuring that resources are used to benefit the whole tribe, as opposed to enriching single individuals. However, correcting misappropriation could also be regarded as government interference in indigenous governance systems, thus, posing challenging questions with regard to human rights compliance. This can be avoided by giving due regard to such issues throughout negotiations, including indigenous peoples and

¹⁴⁷⁸ Abate, Randall.(2013) *Climate change and Indigenous peoples: the search for legal remedies*. Cheltenham, UK: Edward Elgar, 172.

¹⁴⁷⁹ As noted in our section on indigenous peoples' rights, indigenous peoples possess the right to self-determination, which includes "the right to make internal decisions to hold lands, territories, and natural resources as communal property." Inter-Am. C.H.R., "Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources", OAE/Ser.L?V?II., doc. 56/90, ¶63 (2009); Anderson, Nicholas, "REDDy or not? The Effect on Indigenous Peoples in Brazil of a Global Mechanism for Reducing Emissions from Deforestation and Degradation", 2 *Journal of Sustainable Development* 18, 22 (2009).

¹⁴⁸⁰ Sikor, T., J. Stahl, T. Enters, J.C. Ribot, N. Singh, W.D. Sunderlin and L. Wollenberg. 2010. "“REDD-plus, forest people”'s rights and nested climate governance." *Global Environmental Change*, Vol. 20, No. 3, pp. 423-425.

¹⁴⁸¹ Hiraldo, Roc o, and Thomas Tanner.(2011) *The global political economy of REDD+: engaging social dimensions in the emerging green economy*. Geneva: UNRISD, 4.

¹⁴⁸² These refer to local peoples' minimal participation in decision-making, including the right to information and access to justice.

¹⁴⁸³ Hiraldo, Roc o, and Thomas Tanner.(2011) *The global political economy of REDD+: engaging social dimensions in the emerging green economy*. Geneva: UNRISD, 4.

¹⁴⁸⁴ Abate, Randall.(2013) *Climate change and Indigenous peoples: the search for legal remedies*. Cheltenham, UK: Edward Elgar, 171.

carefully drafting REDD+ contract in reflecting agreed-upon parameters for payments and benefit-sharing.¹⁴⁸⁵

The skepticism surrounding REDD+ has also attracted an unprecedented number of **pro-poor social groups** whose strategies, aiming to raise awareness of social dimensions across REDD+, have resulted in the inclusion of development and social justice issues, such as **community participation** in decision-making processes, as well as the recognition of forest peoples' rights and the development of safeguards for REDD+. ¹⁴⁸⁶ However, both indigenous peoples and women's procedural rights are at risk if global and national REDD-related climate policies *do not* account for such stakeholders even in states where their rights have been officially recognized – local and indigenous peoples' forest tenure rights, as well as rights to citizenship, FPIC, and the right to redress – have often been poorly enforced.¹⁴⁸⁷ At the same time, the existing REDD+ structure has already placed additional weight on various stakeholder groups – both with regard to knowledge of its complex processes, as well as regarding resource availability.

States must become increasingly aware of the role that forests play in supporting communities' adaptive capacity and maintaining ecosystem resilience.¹⁴⁸⁸ They must also reflect this awareness in existing policies, such as REDD+, whose implementation can potentially result in human rights violations.¹⁴⁸⁹ “For example, fragmentation of the Amazon as a result of road building and incursion of non-indigenous commercial activity often has extensive negative ecological effects that are expected to exacerbate climate change impacts in the region.”¹⁴⁹⁰ An awareness of such potential consequences is particularly important as forest-related institutions often have a tendency of being characterized by unclear property rights, remoteness from public scrutiny, and historically repressive state actions. As a result, the international community may face both risks and payoffs: the human rights risks of forest-related interventions in the short run, and human rights risks of no action in the long-run. However, these risks – especially those affecting indigenous peoples and women's rights and welfare – may be minimized through human rights safeguard policies, monitoring, and assessments.¹⁴⁹¹ Capacity building and participation are particularly crucial in forest management. This includes: “training forest officials with regard to rights-based responsibilities; resolving conflicts over forest land and resources; increasing the transparency of forest-related data and decision-making; reforming laws, regulations, administrative, and judicial mechanisms to recognize and

¹⁴⁸⁵ Abate, Randall. (2013) *Climate change and Indigenous peoples: the search for legal remedies*. Cheltenham, UK: Edward Elgar, 173.

¹⁴⁸⁶ Peskett and Brockhaus, 2009, based on analysis of case studies in Cameroon, Tanzania, Bolivia, Indonesia and Vietnam; EDF, 2009. ‘Brazil national and state REDD’; and Baker and McKenzie, 2009, based on analysis of Brazil, Indonesia, Madagascar, Guyana and PNG, 40.

¹⁴⁸⁷ Seymour, Frances. (2010) “Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs”, 208 and 212; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹⁴⁸⁸ Ibid.

¹⁴⁸⁹ Ibid.

¹⁴⁹⁰ Laurance, William F, “Forest-climate interactions in fragmented tropical landscapes”, 359(1443) *Phil. Trans. R. Soc. Lond. B*, 345-52 (2004); see also Malhi, Yadvinder, et al., “Climate Change, Deforestation, and the Fate of the Amazon”, 319(5860) *Science* 169-72 at 169 (2008). 158.

¹⁴⁹¹ Seymour, Frances. (2010) “Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs”, 208; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

protect forest peoples' rights and management systems.”¹⁴⁹² Integrating a rights-based approach into REDD+, thus, requires that pro-poor policies guarantee indigenous and local communities' rights, as well as an understanding of how the inclusion of equity and social justice issues are negotiated in REDD+.¹⁴⁹³ Moreover, it must be highlighted that sustainable forest management and governance is vital even without financial incentives. REDD + schemes should not provide a basis for developing countries to refuse to reduce deforestation and forest degradation in a sustainable fashion unless payment. At the same time, it has been noted that support for REDD+ should not provide a basis for developed and developing countries to shift their focus away from key greenhouse gas emitting sectors, especially the energy sector, including fossil fuel production and use, energy use in residential and commercial buildings and transportation, and industrial processes. In particular, developed country support for REDD should not provide a basis for these countries to shirk away from the vital need to address their own greenhouse gas emissions.

6.6. Recommendations

REDD+ activities must be set within a wider focus on the underlying drivers of deforestation and degradation, including poverty and agricultural policies, among others. They should be consistent with the maintenance of indigenous livelihoods and ensure equitable access to the benefits of forests. While REDD+ is often discussed in siloes, there is a need for an integrated and more effective approach – further guidance and modalities grounded in lessons learned – to implement REDD+ activities. Furthermore, there is a need for a coordinated approach to gathering, analyzing and applying such lessons to international policy. Programs and activities must be designed in a manner that can support vulnerable and marginalized groups. International conventions, treaties, as well as other instruments, can serve as a basis for a human rights-based approach to the climate change regime, development cooperation, and REDD+. REDD+ strategies should be designed within the context of national policies and economic development whereby states ensure that REDD+ reaches out and engages the right sectors, while avoiding to put the full weight of a country's development issues on the shoulders of REDD+ strategies.

It will, thus, be important to set ambitious, but reasonable goals for what REDD+ can do for forests. This can be best articulated and analyzed at the national level, where relevant approaches – including better synergies in national-level planning processes (e.g. national REDD+ strategies, adaptation plans, biodiversity plans) – and tools can be applied to address risks and to enhance the benefits of REDD+. As with other REDD+ relevant efforts, country ownership of the REDD+ process and meaningful and continued stakeholder engagement are key to developing realistic, effective, and equitable safeguards that will help assuage valid concerns about the risks of REDD+. Considering a growing demand for REDD+ pilot project, there must also be a concerted global effort to improve

¹⁴⁹² Seymour, Frances. (2010) "Forests, Climate Change, and Human Rights: Managing Risk and Trade-Offs", 230; In Humphreys, Stephen. *Human rights and climate change*. Cambridge: Cambridge University Press, 2010.

¹⁴⁹³ Additional complex issues in the context of REDD+ include: the role of income distribution, carbon credits, and benefit-sharing. Borges, Beto, et al. *Avoided Deforestation (REDD) and Indigenous Peoples: Experiences, challenges and opportunities in the Amazon context*, Sao Paulo, Brasil: Instituto Socioambiental and Forest Trends (2010) 36, 93.

and increase financing for country-specific REDD+ strategies and objectives, catalyzing adequate financing for REDD+ across all phases of implementation, and incentivising non-carbon benefits (NCBs). This also includes long-term stable funding for indigenous peoples' and women's representatives to participate in decision-making. **Moreover, attention must also be paid to ensuring that financial benefits flow directly to indigenous communities. Finland must partake in these discussions – the vision of the system, links between various elements, synergies with relevant processes, effective financing and benefit-sharing, as well as flexible systems of broad participation.**

6.6.1. General

a) WB Safeguard Policy: Update & Review

The World Bank's Safeguard policy is currently undergoing a three-phased review and update.¹⁴⁹⁴

Particularly relevant dates include:

- Review and Update Phase 2 (May 2013-Nov 2013)¹⁴⁹⁵: The team will analyze feedback from Phase and will begin working on an integrated safeguard policies framework to be presented to the Board of Executive Directors in the second half of 2013.
- Review and Update Phase 3 (Dec 2013-Jun 2014)¹⁴⁹⁶

This review and update provides the WB with an opportunity to build on its current safeguard policies, improve coverage and environmental and social risks, deliver better social and environmental outcomes across its projects and programs, as well as strengthen country systems and institutions. Although Finland has not participated in Review and Update Phase 1, which included interviews with experts and stakeholders, Phase 2 provides an opportunity for Finland to be consulted and discuss the draft integrated framework with the review and update team. ***In these discussions, Finland should particularly emphasize the importance of discussions surrounding Free, Prior and Informed Consent vs. Free, Prior and Informed Consultation.*** As noted in the sections on Indigenous Peoples' Rights and REDD+, FPIC can act as a form of legal empowerment for indigenous communities and is integral to their full and effective participation. However, while indigenous peoples' representatives have fought hard to include FPIC in FIP processes, their efforts and proposed references to FPIC were replaced with the World Bank accepted 'Free Prior and Informed Consultation'. ***In workshops, such as the one outlined below (to be held by the FCPF's Carbon Fund in September), Finland should encourage the streamlined application of FPIC guidelines between UN-REDD, FCPF, and REDD+ Partnerships so as to ensure the inclusion of free, prior and informed consent, as opposed to free, prior and informed consultation.***

¹⁴⁹⁴ This was endorsed by the Committee on Development Effectiveness of the WB's Board of Executive Directors on October 10, 2012. In <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,contentMDK:23275156~pagePK:64168445~piPK:64168309~theSitePK:584435,00.html>.

¹⁴⁹⁵ Consultation Period Dates are to be confirmed.

¹⁴⁹⁶ Consultation Period Dates are to be confirmed.

b) Empowering Communities at the National and Subnational Level

Despite indigenous peoples' existing advocacy in REDD+, they **do not have a globally unified position**.¹⁴⁹⁷ This is, in part, because REDD+ projects are context-specific, depending on history, national and international politics, customs, and relations with national authorities. It is, thus, even more important that indigenous peoples have the ability to develop their roles and participate in decision-making, guided by the protection of their human rights as guaranteed under ILO 169 and UNDRIP, alongside other international instruments. Self-determination and FPIC must be overarching and continually re-emphasized in REDD+ negotiations. Support for indigenous and forest-based communities must not only come from UN-REDD and the FCPF, but must also be ensured by local and national government authorities.¹⁴⁹⁸ The increased institutional support of indigenous peoples and women will be required if equity, rights and social justice are to be considered key aspects of the future REDD+ implementation. Empowering communities at both the international and national level is paramount in the construction of concrete methodologies and national architecture. This is particularly relevant with regard to Finland as its representatives have, for instance, not actively participated in developing the methodological framework of the FCPF's Carbon Fund.¹⁴⁹⁹ This includes design forums¹⁵⁰⁰, meetings, as well as the Working Group on the Methodological and Pricing Approach for the Carbon Fund of the FCPF, which held its seventh meeting in Paris in late June, 2013. ***Consequently, Finland should ensure that its representatives actively participate in developing the methodological framework of the Carbon Fund of the FCPF. Furthermore, Finland should also consider sending representatives to the next Forest Carbon Partnership Facility's Participants Committee Fifteenth Meeting.*** This is particularly relevant considering that, at the last meeting, a request to invite Women's Observer to PC meetings was examined. In attending such meetings, Finland could help influence women's representatives to have a voice in discussions surrounding the following issue areas: capacity building, legal issues, Carbon Fund, Readiness Fund budget, monitoring and evaluation, and knowledge sharing.

At such meetings, Finland must ensure that the following are addressed:

➤ ***The equitable distribution of REDD-related Benefits***

REDD+ activities should not only provide revenue for central and provincial governments in host communities, but should also ensure the equitable and adequate distribution of REDD-related compensation for decisions or actions taken in relation to local and indigenous communities' land – land that they own, inhabit, or depend upon (Art 20.2 and 26.3). This requires that clear and consistent rules

¹⁴⁹⁷ For example, IUCN Indigenous Peoples and Climate Change/REDD: AN Overview of Current Discussions and Main Issues (2010) 5, 7. Access at: http://cmsdata.iucn.org/downloads/iucn_briefing_ips_and_redd_march_2010.pdf (last accessed: 30 March 2013).

¹⁴⁹⁸ Stakeholder Consultation with Kennan Rapp. Interview with the author.

¹⁴⁹⁹ Ibid.

¹⁵⁰⁰ REDD+ Design Forums are a series of participatory expert workshops aimed to inform the development of the Methodological Framework of the FCPF Carbon Fund. Past topics have included: Carbon Rights, Land and Resources Tenure, Non-Carbon Benefits; Operational and Financial Planning for ER Programs; Safeguards, Benefit Sharing, Feedback and Grievance Mechanism; Reference Levels, MRV, and Carbon Accounting. For more information on FCPF design forums, see: <http://www.forestcarbonpartnership.org/development-carbon-fund-methodological-framework-0>.

regarding the distribution of REDD+ benefits (particularly monetary payments and carbon credits) be established prior to agreements that restrict indigenous land use in compliance with REDD+. Without a pre-existing legal framework that allows for a reliable long-term assessment of how payments or other benefits support tribal development, indigenous peoples are justified in viewing REDD+ as a gamble, especially considering the historical reality that indigenous peoples have rarely benefited from natural resources use on their lands.¹⁵⁰¹ Moreover, some early experiences with REDD-like projects have demonstrated the potential for near-abusive terms in forest carbon contracting.¹⁵⁰² Consequently, ***Finland must help ensure that discussions surrounding potential financial benefits for communities, resulting from REDD+, are held during the early readiness stages in order to avoid unbalance information, and raised expetations. In this regard, Finland should promote a rights-based approach for benefit-sharing issues in protecting bargaining for benefits in REDD+ schemes.***

➤ **Access to Information**

“The need for [most vulnerable and marginalized groups] to understand, shape and exercise their rights over forests is critical if carbon markets are to deliver the livelihood gains and changes in behavior where they are most needed.”¹⁵⁰³ Countries should apply existing freedom of information laws to REDD+, pass such laws if they do not exist, and/or build freedom of information into REDD+: REDD+ countries that have freedom of information laws should ensure that they are effectively implemented and used for delivery of REDD+ information, while countries where no freedom of information law yet exists should build mechanisms for access to information within their REDD+ systems, including in the systems of information on safeguards. This should, however, not deter from undertaking broader freedom of information reform. As REDD+ related information is likely to reside across different government departments, local and regional public bodies, cross-sectoral efforts will be needed to provide easy access to information and avoid fragmentation of information.¹⁵⁰⁴ ***Finland should include access to information requirements in REDD+ bilateral and multilateral agreements and promote the monitoring of implementation. This is particularly important for indigenous peoples who lack information on REDD+ at the global level.***¹⁵⁰⁵ Consequently, such requirements can help support the national implementation of commitments relating to the right of access to information applied to REDD+ and FPIC. Moreover, it should provide technical supporting in drafting and implementing access to

¹⁵⁰¹ Van Dam, Chris, “Indigenous Territories and REDD in Latin America: Opportunity or Threat?”, 2 *Forets* 394-414, 404;(2011).

¹⁵⁰² Ibid.

¹⁵⁰³ UN-REDD Programme (2011), "The Business Case for Mainstreaming Gender in REDD+", UNDP, UNEP, and FAO, 26.

¹⁵⁰⁴ Ibid 6.

¹⁵⁰⁵ For example, IUCN Indigenous Peoples and Climate Change/REDD: An Overview of Current Discussions and Main Issues (2010) 5, 7. access at: http://cmsdata.iucn.org/downloads/iucn_briefing_ips_and_redd_march_2010.pdf (last accessed: 30 March 2013).

information laws, strengthen the capacity of public bodies at all levels to proactively handle and disclose relevant information (e.g. spending, independent evaluations, timely publications, etc.) related to REDD+. This includes complying with access requests. Ultimately, the measure of the effectiveness of plans, policies and measures to enact the right to information for REDD+ will lie in the careful evaluation of whether, how, by whom, and to what purpose the information provided has been used. In these evaluations, the specific needs of indigenous peoples and women, and ways that they access and utilize information, will need to be assessed.¹⁵⁰⁶

➤ **Building on Existing Systems of Governance**

Today, many indigenous peoples are renegotiating their relations to states and new private sector operations seeking access to resources on indigenous peoples' lands.¹⁵⁰⁷ In such cases, where multiple parties are interested in traditional territories, indigenous peoples assert their rights via their own representative institutions. Indigenous peoples, thus, seek the support of international human rights bodies in finding new ways for their autonomy and values to be recognized under both international and national laws and systems of decision-making.¹⁵⁰⁸

Finland should encourage capacity building, awareness raising, and education for national delegations and indigenous representatives. Moreover, they should be provided with knowledge on existing regimes and legal systems that are legally. At the same time, these existing instruments must be kept in mind when working on novel issues surrounding climate change. This includes, for example, the role of CEDAW in the context of REDD+ and indigenous women.

c) Partnerships

Partnerships with NGOs and research institutions may not only serve as channels, but also as a basis on which to build Finnish foreign policy in the context of REDD+. This includes information exchange, data-collection, and sharing. Partners may provide relevant data and information on stakeholder engagement processes in a more systematic matter. At the same time, partnership may provide NGOs, on the ground, with opportunities to build capacity among various actors, including indigenous peoples and local communities. In this regard, Finland should continue to partner with PROFOR, while also engaging with organizations that are specifically dealing with issues focusing on indigenous peoples and women. ***In these partnerships, Finland should encourage the following: information and data coordination (including sex-disaggregated data); complimentary research; as well as workshops and seminars.*** As indigenous women's capacity to participate in

¹⁵⁰⁶ UN-REDD Programme (2011), "The Business Case for Mainstreaming Gender in REDD+", UNDP, UNEP, and FAO, 6.

¹⁵⁰⁷ U.N. Commission on Human rights, Sub-Comm. On the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Working Paper: Standard-Setting: Legal Commentary on the Concept of Free, Prior and Informed Consent, 57, U.N. Doc. E/CN.4/Sub.2/AC.4/2005/WP.1, 2005 (July 14, 2005), at 4.

¹⁵⁰⁸ See Marcus Colchester and Fergus Mackay, In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent". Forest Peoples Programme, 2004, access at: <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/fpicipsaug04eng.pdf> (last accessed: 23 October 2012).

decision-making processes is difficult, *Finland should also aim to focus its partnerships on empowering indigenous women. Examples of potential partnerships include:*

General

The Program on Forests (PROFOR¹⁵⁰⁹) was established in 1997 as a donor-funded programme managed by the World Bank.¹⁵¹⁰ Its primary aim was to support in-depth analysis, innovative processes, knowledge sharing and dialogue. It focuses on four themes, in particular: livelihoods¹⁵¹¹, governance¹⁵¹², financing sustainable forest management¹⁵¹³, and mechanisms for coordinating policies across sectors.¹⁵¹⁴ Finland's Department for International Development Cooperation is a donor to PROFOR.¹⁵¹⁵

Indigenous Peoples

IWGIA currently implements a project titled "Climate Change Partnership with Indigenous Peoples: Promoting rights-based, equitable and pro-poor REDD+ in South and Southeast Asia". It seeks to strengthen indigenous peoples' capacities and to provide them with the information and access to decision making needed to empower them to actively advocate for the recognition and protection of their rights in REDD+. Thus, the aim of the project is to ensure that indigenous peoples have the necessary tools and influence they need to assert the rights that are enshrined in UNDRIP both within global and national REDD+.

Women

Gender sensitive REDD+ initiatives have the potential to become effective strategies for conservation, poverty reduction and climate mitigation, while also helping to decrease existing gender gaps. Including a gender perspective into REDD+ would ensure that frameworks "respect international law instruments and human rights standards" (e.g. CEDAW) and allow for the inclusion of a wealth of women's unique knowledge, skills, and experience that may be vital to successful REDD-related initiatives. Consequently,

¹⁵⁰⁹ For more information on PROFOR, see: Dewees, Peter A, Bruce M. Campbell, Yemi Katerere, Almeida Siteo, Anthony B. Cunningham, Arild Angelsen, and Sven Wunder. (2011) "Managing the Miombo Woodlands of Southern Africa", Washington DC: Program on Forests (PROFOR), access at: <http://www.profor.info/knowledge/policies-and-incentives-managing-miombo-woodlands-southern-africa> and http://www.profor.info/sites/profor.info/files/docs/Miombo_web.pdf.

¹⁵¹⁰ Since 2002, PROFOR has been managed by a team, based at the WB, with support from multiple donors.

¹⁵¹¹ Contributing to a better understanding of forests as a source of livelihood through the documentation of practice experiences, the development of analytical tools, as well as the exploration of impacts on forest-related policies and initiatives on local communities.

¹⁵¹² The governance theme aims to "enhance accountability in the forest sector and contribute to a better understanding of forest law enforcement and governance by supporting technical assistance, empirical research and analysis."

¹⁵¹³ PROFOR investigates new financing instruments (e.g. payments for environmental services, climate-related REDD+ initiatives) that can help make sustainable forestry more profitable.

¹⁵¹⁴ Such coordination occurs through the support of National Forest Programmes or similar multi-sectoral processes.

¹⁵¹⁵ In 2012, Finland's Department for International Development Cooperation provided EUR 800 000 to FAO/National Forest Programme Facility at the World Bank/PROFOR. Access at: <http://formin.finland.fi/public/Print.aspx?contentid=135036&nodeid=38721&culture=en-US&contentlan=2>; and <http://formin.finland.fi/public/default.aspx?contentid=135036&nodeid=41541&contentlan=2&culture=en-US>.

REDD+ must be linked to CEDAW, similarly to how indigenous peoples have linked REDD+ to UNDRIP and ILO 169. Moreover, **states must develop REDD+ strategies that address gender considerations with sex-disaggregated data** that can help ensure accuracy in defining problems (e.g. drivers of deforestation), defining new opportunities, highlighting best practices, and setting guidelines for incorporating gender perspectives from the outset.¹⁵¹⁶ An initiative (2011) by the **IUCN Pro-Poor REDD+ project**, with funding from the Danish International Development Agency (DANIDA) and joint implementation with WEDO, aimed at delivering roadmaps to help guide the design and implementation of gender-sensitive REDD+ strategies in Cameroon, Ghana, and Uganda. Gender roadmaps for REDD+ are products of multi-stakeholder workshops, bringing together various stakeholders – women’s organizations, gender experts, and national level policy-makers – to help “enhance their knowledge on gender and REDD+, discuss country-specific gender issues, and propose actions that would lead to gender-sensitive REDD+ national processes.”¹⁵¹⁷

WEDO¹⁵¹⁸, in cooperation with NORAD and the Ford Foundation, recently published *From Research to Action, Leaf by Leaf: Getting Gender Right in REDD+ SES*, which aims to present a full analysis (e.g. lessons learned, etc) of the gender dimension of REDD+ to policy-makers, program developers, and various other practitioners.¹⁵¹⁹ While this publication particularly focuses on safeguards and standards, it may be applicable across climate change efforts. Furthermore, the Centre for People and Forests held a national expert seminar on Gender, Forestry, Climate Change and REDD+.¹⁵²⁰

¹⁵¹⁶ UN-REDD Programme (2011), "The Business Case for Mainstreaming Gender in REDD+", UNDP, UNEP, and FAO, 7.

¹⁵¹⁷ IUCN Commission on Environmental, Economic, and Social Policy. (2012) "Gender and REDD+ Roadmaps", access at: http://www.theredddesk.org/sites/default/files/resources/pdf/2012/iucn_and_redd.pdf (last accessed: July 26, 2013).

¹⁵¹⁸ Since 2009, WEDO has focused on climate change issues, processes, and mechanisms. Its effort to understand the gender implications of REDD+ has focused on “ensuring that policies, initiatives, proposals and financing mechanisms related to REDD+ respect and promote women's rights and women's vital role as stakeholders, as well as fully incorporate a gender perspective.” In 2011 and 2012, WEDO partnered with IUCN, drafting gender and REDD+ roadmaps with local stakeholders. Furthermore, in 2012-2013, WEDO partnered with REDD+ SES to strengthen the content and process of REDD+ SES with regard to a gender dimension. The partners engaged in a constructive process with multiple stakeholders (e.g. workshops across four countries) in generating concrete suggestions for developing a gender responsive REDD+ country process, including strengthening existing standards and informing action-oriented guidelines for implementation. For more information, access at: http://campaign.r20.constantcontact.com/render?llr=8zz9p6bab&v=001C27c5-9pq2QlyYFIOc6uUW7j4VV5z1Fh6URDwFFFA6d1pxkZdg_DjE6w6hln9XjZW2yxVU8oYJKNdB8M207GjiEXI5gfU5-5ZnsfSV8Z8t6IMXQ5kRH4L7OzQIT5CHTILqEp9qu5NAG-6sPb3Xgc45DdMG6lwFEGBMwh3jyGr4mrTy0u7HKUWA%3D%3D, (last accessed: 23 June 2013); <http://www.wedo.org/themes/sustainable-development-themes/forests/redd-2/wedo-launches-from-research-to-action-leaf-by-leaf-getting-gender-right-in-redd-ses> (last accessed: 23 June 2013).

¹⁵¹⁹ See more at: http://campaign.r20.constantcontact.com/render?llr=8zz9p6bab&v=001C27c5-9pq2QlyYFIOc6uUW7j4VV5z1Fh6URDwFFFA6d1pxkZdg_DjE6w6hln9XjZW2yxVU8oYJKNdB8M207GjiEXI5gfU5-5ZnsfSV8Z8t6IMXQ5kRH4L7OzQIT5CHTILqEp9qu5NAG-6sPb3Xgc45DdMG6lwFEGBMwh3jyGr4mrTy0u7HKUWA%3D%3D, (last accessed: 23 June 2013); <http://www.wedo.org/themes/sustainable-development-themes/forests/redd-2/wedo-launches-from-research-to-action-leaf-by-leaf-getting-gender-right-in-redd-ses> (Last accessed: 23 June 2013).

¹⁵²⁰ The seminar was held on February 19th, in Vientiane, Lao PDR. For more information on the centre see: <http://www.recoftc.org/site/>.

d) Research and Data

The collection, analysis, and utilization of data in assessing drivers of deforestation and degradation, contributors to sustainable forest management, conservation, and the enhancement of forest carbon stocks are paramount in developing effective policies. Moreover, data helps clarify differential access and strategic need, especially with regard to women and indigenous peoples. Sex-disaggregated data is, thus, particularly important.

➤ *Access to Near-Real-Time Deforestation Data*

As a leader in technology and communication, Finland should contribute to the development of and partake in the pilot testing period of *Global Forest Watch 2.0*, a near real-time forest monitoring system that combines satellite technology, data sharing, and global human networks to fight deforestation.¹⁵²¹ Developed under the auspices of the World Resources Institute (WRI), this tool can provide governments, companies and communities with up-to-date information regarding deforestation and, thereby, help monitor and manage forest resources. This is particularly crucial as data regarding forests is often out of date and difficult to collect on a global scale.¹⁵²² Converging human networks and technologies can help address many forest-related challenges. These include satellite and remote sensing technology¹⁵²³, the detection of forest degradation¹⁵²⁴, cloud computing¹⁵²⁵, high speed internet¹⁵²⁶, smart phones¹⁵²⁷, and crowdsourcing¹⁵²⁸. Set to launch in late 2013, GFW 2.0 – combining satellites, new algorithms, cloud computing, mobile phone technologies, and WRI databases to connected images, maps, photos, and data – will allow actors (e.g. governments, IGOs, NGOs, companies, and the media) to see deforestation alerts within two weeks of their occurrence. It will enable governments to better enforce sustainable forest management and protection laws. Moreover, it can help donor countries, in the context of REDD+, monitor performance and hold countries accountable to their commitments. GFW 2.0 will enable NGOs¹⁵²⁹ on issues regarding forest

¹⁵²¹ To read more about Global Forest Watch 2.0 see: <http://www.wri.org/gfw2>.

¹⁵²² The WRI notes that, “[d]eforestation continues today in part because by the time satellite images are available, analyzed, and shared, the forest clearing is long done. The illegal loggers have moved on; cattle are already grazing amidst stumps; the oil palm plantation has been established. We simply find out too late.”

¹⁵²³ NASA’s Landsat 8, launched in early 2013, as well as other systems enable higher spatial resolution analysis and faster updates, thus, enabling the development of near-real-time forest cover change detection.

¹⁵²⁴ Imazon, a Brazilian partner, has made its Amazon Alert system available. Moreover, the DETER system is innovating in the detection of forest degradation. Brazil has, in part, decreased deforestation in the Amazon by almost 80 percent due to improved satellite imagery.

¹⁵²⁵ Cloud computing can rapidly process and interpret large volumes of satellite data at a low cost by utilizing clusters of servers around the global. “Google Earth’s Engine team has partnered with GFW 2.0 to optimize easy access to cloud computing-based forest cover information.”

¹⁵²⁶ Enables the sending of data and forest maps, processed globally, to laptops and mobile phones.

¹⁵²⁷ May be used in the field to download and upload maps, satellite images, coordinates, and photographs from the ground.

¹⁵²⁸ Empowering millions of individuals to gather and share information, participate in forest monitoring, and hold decision-makers accountable.

¹⁵²⁹ GFW 2.0 will “anchor” NGOs in priority countries or regions will utilize and contribute content in an open-source, network model. “These groups include include ScanEx and its non-profit affiliate Transparent

conservation, indigenous rights, and REDD+ to identify hotspots and mobilize action as they arise. This will enable local, national, and international media to put pressure on various actors to curtail forest conversion and illegal logging. ***Finland should ensure that actors – all levels of government, NGOs, as well as indigenous and local communities – participating in REDD+ have access to GFW 2.0 in order to 1) track changes; 2) effectively participate in decision-making processes; as well as 3) hold decision-makers accountable.***

➤ *Research Networks for Information-Sharing*

In order to ensure quality research on REDD+ related issues, Finland should develop a research network, akin to the Norwegian Research Network, in honing and sharing its forestry expertise to base future foreign policy regarding REDD+ on. Norway has successfully established the collaborative Norwegian REDD Research Network¹⁵³⁰, which includes interdisciplinary researchers at Norwegian research institutions who are working on and are interested in REDD-related research. The research undertaken in this network significantly shapes Norway's bilateral relations with forest-rich developing countries.¹⁵³¹ Such a research network allows Norway to not only contribute financially to REDD+ projects, but to also support advocacy work and build capacity¹⁵³². Additionally, it has strengthened relations between researchers in Norway and the South.¹⁵³³ Activities include: national workshops, seminars and workshops for PhD- and MSc-level students, and small-scale funding for REDD_ related workshops and engagement activities.

6.6.2. Indigenous Peoples

a) Practical Approaches to Ensuring the Full and Effective Participation of Indigenous Peoples in REDD+

Decisions taken within UNFCCC influence national policymaking on REDD+ and the institutional structures and mechanisms for its implementation. Indigenous peoples need to be involved in national processes in order to ensure that their rights are not encroached upon and that their traditional knowledge and community-based forest management practices are recognized as a critical contribution to the reduction of deforestation and forest degradation and the conservation of biodiversity rich natural forests. Numerous questions on how to make indigenous peoples' participation in national policy-making and

World in Russia, Imazon in Brazil and their Amazon-wide network of partners across the seven neighboring countries, the Observatoire Satellital des Forêts d'Afrique Centrale (OSFAC) which covers the Central Africa region." In <http://www.wri.org/gfw2>.

¹⁵³⁰ The Norwegian REDD Research Network was established on the initiative of SUM and FNI in collaboration with CICERO and NINA, with financial support from NORAD's Climate and Forest Initiative.

¹⁵³¹ This includes Norway's International Climate and Forest Initiative, in particular.

¹⁵³² REDD+ processes and systems must be designed to address existing inequalities to ensure inclusion, participation, transparency and accountability. As shown above, tools include gender sensitization training at the local level; the collection and use of sex-disaggregated data; gender analyses of policies and programmes; and participatory, gender-sensitive budgeting, monitoring and auditing. Capacity building is an overarching necessity.

¹⁵³³ This has largely taken place via networking events.

REDD+ strategies meaningful remain. “Methodologies and approaches such as community participatory monitoring, participatory mapping of forests in Indigenous Peoples’ territories, human-rights and ecosystem-based approach should be employed in implementing REDD+”¹⁵³⁴ Consequently, *representatives of the Finnish Foreign Ministry have been cordially invited to attend a Joint Expert Workshop (maximum of 60 persons) on Practical Approaches to Ensuring the Full and Effective Participation of Indigenous Peoples in REDD+: Discussion of Experiences and Lessons to Date, to take place on September 10th-12th, 2013, in Weilburg, Germany.* This workshop, co-sponsored by the FCPF, BMZ¹⁵³⁵, and UN-REDD will provide an opportunity for specialists on REDD+ Consultation/Participation and indigenous peoples to share experiences and discuss lessons in local- and national-level participatory processes for REDD+ involving indigenous peoples. With the central objectives of identifying way of providing the legitimate and effective participation of indigenous peoples in REDD+ activities, with an emphasis on national decision-making processes, it will build on existing experiences regarding participation at the local or project level.

b) Encouraging Long-Term Funding for Indigenous Peoples

States that are currently implementing REDD+ programs have provided **limited opportunities for participation or consultation** in decision-making processes regarding REDD+, thus forcing indigenous peoples to primarily engage with REDD+ via information sharing.¹⁵³⁶ While consultation and access to credible and reliable information are important, stakeholders may not be well-organized or have the support and training required to participate effectively. Meanwhile, other stakeholder groups with sufficient expertise and training, may be overwhelmed with consultation requests (from governmental to non-governmental organizations, as well as academia) leading them to be unavailable or unable to participate in several processes at once. Additionally, it has been noted that it is often the same specialists who are called into participatory processes, partly due to a lack of resources and a need for capacity-building, especially with regard to gender and indigenous expertise.¹⁵³⁷ It is, therefore, important to empower organizations via various resources.¹⁵³⁸ Moreover, the disappearance of an opposition (e.g. indigenous peoples organizations) to REDD+ schemes from discussions surrounding REDD+ has occurred for various reasons – ranging from a lack of resources (e.g. financing travel) to a lack of expertise. In order to secure the participation of indigenous peoples, local communities, and women in REDD+ decision-making, funding must be reliable and long-term, as opposed to project-based. Pilot programmes – testing out different means of financing REDD+ – are key to how the scheme will be financed in the future and is, thus,

¹⁵³⁴ Lang, Chris. "REDD at COP18, Doha: What's on the agenda?." *REDD Monitor*, access at: www.redd-monitor.org/2012/11/27/redd-at-cop18-doha-whats-on-the-agenda/ (last accessed: July 26, 2013).

¹⁵³⁵ "The German Government has played an important role in the establishment of the FCPF and is an important financial contributor to the Partnership. In 2011, the Federal Ministry of Economic Cooperation and Development (BMZ) launched its Human Rights Strategy, which commits all relevant actors in bilateral development cooperation to adhere to it in a cross-sector approach." Quoted from the invitation.

¹⁵³⁶ Forest Peoples Programme, "Lessons from the field: REDD+ and the rights of indigenous peoples and forest dependent communities" 3 (2011) access at: <http://www.forestpeoples.org/sites/fpp/files/publication/2011/11/lessons-field-briefing-english.pdf> (last accessed: 31 March 2013).

¹⁵³⁷ Partly from a stakeholder consultation with Deborah Delgado Pugley. Interview with the author.

¹⁵³⁸ Stakeholder consultation with Deborah Delgado Pugley. Interview with the author.

particularly important in developing appropriate instruments today. ***Consequently, Finland should encourage long-term funding for such stakeholders to partake in meetings at various levels of governance – from local discussions on project implementation to FCPF meetings regarding FPIC.***

c) Customary Rights and FPIC

The Samaramaka case, outlined in Section 2.5. Indigenous Peoples Rights in International Law, has dual significance with regard to the concept of FPIC. It not only sets a detailed requirement of FPIC in relation to large-scale interference on indigenous peoples' traditional lands and territories, but also places a duty on states to obtain indigenous peoples' consent by accounting for their customary laws and practices. The latter is important when recognizing the true partnership between states and indigenous peoples in the name of equality, as it may not be states but indigenous peoples who set the rules for dialogue. For instance, how FPIC may be practically obtained with the community in question. Additionally, the Saramaka case is important in its endorsement and direct use of the UNDRIP as a source of legal interpretation. This case shows how so called 'soft law' instruments can have great legal weight. It also demonstrates why some states have had difficulties in adopting the Declaration despite its non-binding nature. ***Consequently, Finland should note and assert that, in the context of REDD+, FPIC must go hand-in-hand with the customary rights of indigenous peoples.***

d) Self-Determination: FPIC, Tenure Rights, and Indigenous Women

Part 1:

Self-determination is and should continue to be a concern for both indigenous communities and REDD+ organizations. Indigenous rights advocates consider self-determination to be the basis for FPIC. However, according to international human rights jurisprudence, FPIC is legally based on property rights, cultural rights, and the right to non-discrimination.¹⁵³⁹ While these rights recognize a collective element in the case of indigenous peoples they have an individual rather than a collective basis. The UN Human Rights Committee (HRC), for instance, accepts communication from individuals concerning individual human rights. According to HRC case practice, it only receives complaints based on individual rights, such as the right of members of a minority groups in Article 27, but not a right to self-determination (Art.1), which is a right of a collective.¹⁵⁴⁰ FPIC has recently been acknowledged as a part of Article 27. FPIC has also been adopted as a part of the biodiversity regime where it is not directly rooted to the question of self-determination, but rather acknowledges that indigenous peoples, as holders of traditional knowledge, may provide a valuable contribution to biodiversity protection and should, thus, participate and share the benefits of the use of, for instance, genetic resources. The question of whether FPIC should be directly linked to self-determination or whether it is, in fact, more meaningful to speak of an inherent part of the right to cultural integrity must be further examined. The role of indigenous women, particularly in the context of REDD+, should be further examined, especially as they are often faced with trade-offs between

¹⁵³⁹Ward, Tara, "The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law", *Northwestern Journal of International Human Rights*, Vol 10:2, 2011: 56.

¹⁵⁴⁰ See, *Lubicon Lake Band v. Canada*, Communication No. 167/1984, CCPR/C/38/D/167/1884.

indigenous rights (as a collective) and gender rights (as individuals) with regard to land ownership and tenure. See SECTION XX on INDIGENOUS WOMEN for more information. ***Finland should, thus, advocate that women are guaranteed proper tools to intervene on their territories.***

Part 2:

Moreover, issues of land ownership and tenure, especially regarding indigenous women, must be resolved prior to REDD+ agreements in order to prevent the exacerbation of land conflicts resulting from increased economic value attached to REDD+ forest lands. Tenure issues should be addressed in an effort to secure the official recognition of women's rights to forest products and carbon. It is key to align the incentives of investors and local communities. It is here that "ensuring tenurial security for women in particular would provide higher degree of confidence in the alignment of those incentives."¹⁵⁴¹ ***Finland should undertake a research programme that helps design and strengthen the empirical case for women's tenurial land ownership rights.***

6.6.3. Women

a) Capacity Building for Women in the Forestry Sector

"Local communities need to be empowered through teaching, awareness-building, training, workshops, as well as financing (e.g. sustainable agriculture)."¹⁵⁴² Women's effective participation in REDD+ pilot projects requires the identification and replication of good practices and actions for integrating women; encouraging participation through the provision of resources; building local women's capacity to participate in pilot projects; and providing both genders with equal access and control over tools, equipment, technology, and resources. The meaningful consultation and effective participation of women in negotiations surrounding REDD+ can be strengthened via the formal and informal education of women and girls in the forestry sector, including gender training for staff at forest-related institutions; identifying interested and qualified women; motivating women to remain in the forestry sector. Empowering local women to assume leadership roles through capacity building, in turn, includes identifying emerging skills and knowledge in both women and girls; reinforcing gender sensitive regional and local information and communications systems; establishing support for the regional and local flow of information, capacity-building sessions, and vocational training; and capacity-building for girls with regard to technical aspects surrounding REDD+. ***Finland should share best practices in forest management systems for women to help build capacity, especially in the context of REDD. This includes the financing of education programs, which are usually the responsibility of women.***¹⁵⁴³

In addition, Metsähallitus, Finland's state forest enterprise, has actively studied forest management and decision support systems for more than a decade. It has extensive experience in participatory management planning and first introduced the concept into the Finnish context in the 1990s. Its participatory forest management planning consists of four

¹⁵⁴¹ Evidence suggesting that women are better at managing tenure is merely anecdotal.

¹⁵⁴² Stakeholder consultation with Constance Okollet. Interview with the authors.

¹⁵⁴³ Stakeholder consultation with Deborah Delgado. Interview with the author.

stages: (i) collecting information on the different objectives, (ii) creating and evaluating different management options, (iii) selecting the most suitable option, and (iv) informing stakeholders on the selected management option. Metsähallitus has acknowledged that participatory forest management planning has helped avoid conflicts in forest management, gaining benefits from the following: improved informing of stakeholders on activities that are about to be carried out; ability to include different objectives into the management; improved relations among the stakeholders; greater perception of different needs and opinions; increase transparency of forestry activities in certain areas; and increased transparency of forestry activities.

6.6.4. For Future Reference

There are potential future developments that the MFA should consider in promoting the participatory rights of indigenous peoples and women in REDD+. These include:

- Deliberation surrounding SIS, reference levels, drivers of deforestation, improving the level of ambition on ERR and financing, and MRV should continue.
- 2013-2020 should see the scaling up of Phase 1 and 2 in developing countries with the sharing of best practices, including demonstration and experimentation.
- Come 2020, when a new protocol with all these elements is officially in place, REDD+ can transition smoothly into phase 3, where hopefully a far larger institutional machinery will keep supply and demand for REDD-Plus stable, and financial support for performance based payments are sustained through REDD-Plus credits by developed countries, or by in-country support through NAMAs.
- By 2015, the Ad-hoc Working Group on the Durban Platform for Enhanced Action (ADP) should have established a demand and drive investment into REDD+ globally via decisions on how REDD+ will interact with the following elements, among other: MRV, finance, raised mitigation commitments, new market mechanisms, language.

Chapter 7. General Recommendations

The following policy suggestions depart from Finland's human rights policy.¹⁵⁴⁴ The suggestions are intended for the Ministry of Foreign Affairs, Finland. They are presented with the understanding that the human rights-based approach will remain a centrepiece of Finnish foreign policy.

7.1. Monitoring Existing International Legal Mechanisms

Finland should help ensure that existing international legal mechanisms and regulations on indigenous peoples (e.g. UNDRIP, ILO 169, and CBD) are monitored and enforced on a national level. Moreover, all UN member states should include mechanisms evaluating the impacts of climate mitigation measures on indigenous peoples in their climate change strategies.¹⁵⁴⁵ In addition, indigeneity in the context of climate adaptation, should not only be confined to what is local or traditional.¹⁵⁴⁶ Furthermore, Finland must help ensure that appropriate rules, norms, regulations, and institutional coordination for implementation and compliance are in place.¹⁵⁴⁷ Moreover, when reading this report, it becomes evident that importance lies in relevant ministries cooperating, corresponding, and sharing knowledge with one another. Only in this way can and will they be aware of existing legal instruments, policies, and obstacles. Furthermore, Finland should reflect on how it has engaged its own citizens – can it be a leader in promoting access to justice, participation, and information? The promotion of Finland's human rights values can influence such processes at both an international and national level, provide it with the means to share best practices and follow through on its international human rights and climate change commitments in existing international regimes.¹⁵⁴⁸

¹⁵⁴⁴ "Human rights and Finland's foreign policy - Ministry for Foreign Affairs of Finland: EU: Human rights" *Ulkosaainministeriö*, access at: <http://formin.finland.fi/public/default.aspx?contentid=108253&contentlan=2&culture=en-US> (last accessed: 26 July 2013).

¹⁵⁴⁵ See Cochran, Patricia, Statement on behalf of the Arctic Caucus at the United Nations Permanent Forum on Indigenous Issues, Special Theme: Climate Change, Biocultural Diversity and Livelihoods (April 22, 2008), transcript available at www.docip.org (last accessed: 30 March 2013).

¹⁵⁴⁶ Koivurova, Timo, Adam Stepien, Anna Gremesberger, and Henna Niemi (forthcoming in 2013) "Arctic Indigenous Peoples and the Challenge of Climate Change" in *Arctic Marine Governance: Opportunities for Transatlantic Cooperation*, Krämer and Cavalieri (eds.).

¹⁵⁴⁷ OHCHR and UNEP. (2012) "Human Rights and the Environment – Rio +20: Joint Report OHCHR and UNEP" (Background Document), OHCHR-UNEP Joint Side Event, "Human Rights at the Center of Sustainable Development - Honoring Rio Principle 1", United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 19 June, 2012, 38.

¹⁵⁴⁸ World Health Organization. (2011) *The Social Dimensions of Climate Change* (Discussion Draft), 29; For a HRBA Checklist see: Seppänen, Samuli. (2005) "Possibilities and Challenges of the Human Rights-Based Approach to Development", 17 Helsinki: Erik Carstrén Institute Research Reports, 106-108.

7.2. Research on Human Rights, Environmental Sustainability and Climate Change

The MFA should encourage representatives, as well as researchers at Finnish institutions to actively participate at the 3rd Yale/UNITAR Conference on Environmental Governance and Democracy that will focus on the interface of human rights, environmental sustainability, and climate change, to take place in 2014. The 2013 Yale Workshop on “Rights in Environmental Governance: Explaining their Emergence, Examining their Effectiveness”¹⁵⁴⁹ convened twenty scholars and practitioners to discuss the role and influence of rights in modes and systems of environmental governance. Two principal themes included: 1) Explaining the Emergence of Rights in Environmental Governance Systems and Arrangements; and 2) examining the Influence of Rights on Environmental Governance and Outcomes.¹⁵⁵⁰ Key outcomes included: “proposed elements of a research agenda on rights and environmental governance, the genesis of a new collaborative research project to assess levels of implementation of environmental rights worldwide, and a discussion on the concept of a new tool-kit on the constitutional recognition of the right to a healthy environment.”¹⁵⁵¹ The following areas, among others, have been identified as necessary in furthering research on rights and environmental governance:¹⁵⁵²

- The *distinctive* role and influence of rights in environmental governance, such as “case study research that compares processes of change, empowerment, and mobilization in environmental governance with variations in the legal recognition of environmental rights.”
- Factors that may hinder the effectiveness of rights in particular contexts.
- The link between environmental and social movements that support human rights, as well as the indigenous peoples’ and forest dependent communities’ rights (e.g. tensions, synergies, and misunderstandings).
- Ethical challenges associated with defining environmental rights in a manner that excludes or negatively affects groups who are not defined as right-holders in a particular context (e.g. indigenous women).

Existing national and global institutions have not been designed in a manner that allows for the effective pooling and management of transboundary resources. Furthermore, national regulatory systems and accountability mechanisms are often weak. Issues regarding ownership, access to regulation and various resources, participatory rights, are

¹⁵⁴⁹ The workshop was organized by the Governance, Environment & Markets Initiative (GEM) at Yale and the United Nations Institute of Training and Research, with support from the Yale Center for Environmental Law & Policy, the Tropical Resources Institute, the Global Institute for Sustainable Forestry, and the Edward J. and Dorothy Clarke Kempf Fund of the Macmillan Center for International and Area Studies at Yale.

¹⁵⁵⁰ For more information see: <http://environment.yale.edu/content/documents/00003437/Yale-UNITAR-Workshop-Outcome-Documents.pdf?1373479970> (last accessed: 26 July 2013).

¹⁵⁵¹ For more information on the content see: <http://environment.yale.edu/gem/events/yaleunitar-workshop-on-rights-in-environmental-governance/> (last accessed: 25 July 2013).

¹⁵⁵² These key research questions and gaps are set to be developed further into a briefing paper that will be released at a later stage.

fundamental and must be examined closely. In order to achieve effective results, there must be system-wide coherence whereby cooperation between UN institutions and IFIs (WBG, IMF, WTO) is strengthened through both formal and informal ties.¹⁵⁵³

7.3. Partners

The MFA, as its key funder, should work closely together with KIOS in promoting the realization of human rights, particularly supporting human rights projects focusing on women, indigenous peoples, and indigenous women in the context of climate change and sustainable development. For example, KIOS has stated that, linking environmental issues and KIOS' project would help strengthen their existing work. However, this would require additional information regarding the link between climate change, human rights, and vulnerability. In this regard, Ms Anttila, the executive director of KIOS has noted that, "our partners [are often] not able to analyse these aspects and [we would], therefore, need some more information about what to focus on when intending to connect environmental issues to human rights projects – even at a general level."¹⁵⁵⁴ In this regard, the MFA should share relevant information in the development of new projects and when designing projects in cooperation with partners, like KIOS.

7.4. Indigenous Peoples

Constant formal entry points include the Inter-American commission, as well as annual UN meetings of the Working Groups on Indigenous Population.¹⁵⁵⁵ For instance, a current petition to the Inter-American Commission on Human Rights by the Arctic Athabaskan Council targets Canada, aiming to improve the regulation of black carbon emissions by the federal and provincial governments.¹⁵⁵⁶ The Inter-American Commission has been approached, in part, because it has "successfully [handled] cases put forward by Indigenous peoples" and is "one of the few vehicles we have, or that anyone has, to hold accountable our national [read: Canadian] government for its inaction on climate change mitigation."¹⁵⁵⁷ Moreover, it has been outlined that there is a short-term need for educating individuals on the link between climate change and the impacts of black carbon, noting that emissions could be better regulated and managed.

While focus has been given to the effects of climate change on indigenous peoples, less emphasis has been placed on issues like hydro-dams, which also significantly affect indigenous communities. Consequently, Jenni Kauppila, of the UN Association of Finland, suggests that equal weight be given to understanding and discussing the effects of such

¹⁵⁵³ For example, the WTO does not have a mandate for setting rules or criteria concerning trade measures agreed to in MEAs. "An important aspect in the discussion is the means of implementation. At the moment, Finland is chairing the 'Leading Group on Innovative Financing'. Among other things, our aim is to clarify the concept 'innovative financing mechanisms', to link innovative financing to efficient allocation of funds as well as enhancing development results particularly on country level in events, and to integrate the global action against illicit financial flows and tax havens." See : <http://helsinki.fi/2012/12/03/the-world-after-2015/>

¹⁵⁵⁴ Stakeholder Consultation with Ms Anttila of KIOS. Interview with the author.

¹⁵⁵⁵ Stakeholder consultation with Terry Fenge. Interview with the authors.

¹⁵⁵⁶ Ibid.

¹⁵⁵⁷ Ibid.

projects, as well. An example of a successful project, supported by the UN Association of Finland, is the Snowchange Cooperative¹⁵⁵⁸, which aims to document (e.g. books, photo albums, international conferences, etc.) and work with local and indigenous communities in the Northern regions. Moreover, this Cooperative serves as a global network of local and indigenous cultures – including, among others, Saami, Chucki, Yukaghir, Inuit, Inuvialuit, Inupiaq, Gwitchin, Icelandic, Maori, Australian Aboriginal – and other organizations, including the Arctic Council, the IPCC, Indigenous Peoples Climate Change Assessment, the National Science Foundation of the USA, and various universities. ***In this regard, the MFA should ensure the continued support of such projects alongside climate change-related projects.***

It has been noted that some indigenous peoples (e.g. in Africa¹⁵⁵⁹ or Asia) do not recognize that they are indigenous. ***Consequently, we briefly recommend that Finland support such groups through various projects by developing more inclusive processes for individuals who are not necessarily recognized or do not recognize themselves as being indigenous.***¹⁵⁶⁰

7.4.1. A Seat at the UNFCCC

While the focus of this report is largely on emphasising the streamlining of indigenous peoples and women's participation into the existing and complex climate change agenda, a permanent seat at the UNFCCC is a relevant consideration in reflecting the important role that indigenous peoples play in the context of climate change. Discussions in the UN CBD and the UNFCCC provide the most direct opportunity to influence REDD-related negotiations. In the case of the CBD, indigenous people will have a direct channel of communication via the Ad Hoc Expert Group. In the case of the UNFCCC, indigenous peoples might wish to advocate for a similar group. **Finland should, thus, support the idea of a permanent seat for indigenous peoples at the negotiating table of the UNFCCC, similar to the model of the Arctic Council.** Whereas the Permanent Forum has already actively engaged itself in environmental issues, such as climate change, a formal participatory status in international environmental negotiations, focusing on issues that directly concern indigenous peoples, would naturally fall within the Forum's mandate and could, thus, strengthen the rights and status of indigenous peoples in a meaningful way.¹⁵⁶¹

¹⁵⁵⁸ This project, initiated in 2000, won the prestigious Worldwide Fund for Nature 2002 Panda Prize for best national ecological project. For more information on the Snowchange Cooperative and its projects, access at: <http://www.snowchange.org/> (last accessed: 24 June 2013).

¹⁵⁵⁹ The first case in the African human rights system to uphold an indigenous people's right to customary land was the recently-decided Endorois case concerning Kenya. For more information, see: <http://www.escr-net.org/docs/i/1216218> (last accessed: June 24, 2013).

¹⁵⁶⁰ Stakeholder consultation with IUCN representatives. Interview with the author.

¹⁵⁶¹ See, Heinämäki, Rethinking the Status of Indigenous Peoples in International Environmental Decision-Making: Pondering the Role of Arctic Indigenous Peoples and Challenge of Climate Change, in T. Koivurova, E.C.H. Keskitalo and N. Banks (eds.), *Climate Governance in the Arctic*, Springer, Environment & Policy, Vol. 50 (2009): 207-262, at 251.

7.4.2. Indigenous Peoples' Participation

International processes should be open to participation “by all affected communities, including indigenous peoples and forest dwellers.”¹⁵⁶² Indigenous organizations and governments’ financial, human, and technical capacity to participate must be strengthened within existing institutions and organizations in order to enable them to draw upon their own vision of adaptation.¹⁵⁶³ Financial resources are key in strengthening advocacy capacity among indigenous representatives. Otherwise, they are unable to follow, attend, or contribute¹⁵⁶⁴, are understaffed, or under funded. For example, Gunn-Britt Retter, the Head of Arctic and Environmental Unit in the Saami Council, has noted that, at the Arctic Council, “we [representatives of the Saami Council] are welcome to join different committees, different reports, dealing [with] committees and so on...But we don’t have enough expert people to nominate with the Saami background, or we don’t have money.”¹⁵⁶⁵ There, thus, needs to be a balance between consultation possibilities and actors’ capacities when designing decision-making procedures.¹⁵⁶⁶ Nonetheless, there are also challenges. Mattias Åhrén, President of the Saami Council, argues that while the role of the Council is “strengthened internationally, the work load is increasing and the capacity of the indigenous peoples’ participation is on stand still...[indigenous peoples’] role is in fact weakened and our possibility to influence the work is getting more insufficient.”¹⁵⁶⁷ **Consequently, in line with our recommendation for a seat at the negotiating table of the UNFCCC, we also underline the importance of providing indigenous peoples with appropriate resources so that they can participate “in reality, and not only in theory.”¹⁵⁶⁸**

In securing indigenous participation, Finland should ensure the following:

- The inclusion of indigenous peoples’ representative organizations at all stages of climate negotiation processes.¹⁵⁶⁹
- Indigenous Peoples’ right to participate in or, alternatively, chair contact groups or other bodies that deal with issues of particular relevance to indigenous peoples or local communities.

¹⁵⁶² Center for International Environmental Law and Friedrich Ebert Stiftung. (2009) “Human Rights and Climate Change: Practical Steps for Implementation”, 6.

¹⁵⁶³ ACIA. (2005) Arctic Climate Impact Assessment: Impacts of a Warming Arctic, Cambridge University Press, 665-666.

¹⁵⁶⁴ Interview with Jon Petter Gintal, Senior Advisor for Saami Parliament of Norway, via email (January 2012); see also Keskitalo, Carina, “New Governance” in the Arctic and Its Role for Supporting Climate Change Adaptation”, in Koivurova, Timo, et al. (eds.), *Climate Governance in the Arctic, Environment and Policy* (Springer 2009).

¹⁵⁶⁵ Ibid.

¹⁵⁶⁶ Henriksen, J. (eds) (2008) “Sami Self-determination: Scope and Implementation”, *Galdu Cala – Journal of Indigenous Peoples Rights* 2, 2010; Huntington, HP, A Lynge, J Stotts, A Hartsig, L Porta, and Ch Debicki. (2012) “Less Ice, More Talk: The Benefits and Burdens for Arctic Communities of Consultations Concerning Development Activities”, *Carbon and Climate Law Review* 1, 33-46.

¹⁵⁶⁷ See Åhrén, Mattias, Statement at the United Nations Permanent Forum on Indigenous Issues, Half Day Discussion on the Arctic (21 May 2009), transcript available at www.docip.org (last accessed: March 30, 2013)

¹⁵⁶⁸ Ibid.

¹⁵⁶⁹ Interview with Jon Petter Gintal, Senior Advisor for Saami Parliament of Norway, via email (January 2012).

- Funding should be made available to support the greater participation of indigenous leaders.
- Special translation arrangements that can help improve the ability of indigenous and other local representatives to participate.
- Systems of academic education, research training, and knowledge institutions that should be strengthened. In a conference focusing on climate change, organized by the *Forum for Development Cooperation with Indigenous Peoples* at the University of Tromsø in 2008, the President of the Norwegian Saami Parliament, Egil Oli, emphasized that capacity building is key to adaptation and the ability to recognize and take advantage of new opportunities.¹⁵⁷⁰
- Institutions with the ability to effectively blend local, indigenous knowledge with scientific knowledge must allow participants, operating at multiple scales, to learn from experience.¹⁵⁷¹
- Encourage the inclusions of indigenous representatives in national delegations.
- Communicating research to communities who are subject to that research is crucial. Finland should, thus, consider providing funding for visual communications projects, such as videos discussing systems of governance or discussing processes regarding CEDAW.

7.4.3. 2014 World Conference on Indigenous Peoples

UN General Assembly Resolution 66/296 stated that, the “World Conference shall result in a concise, action-oriented outcome document”, which “should contribute to the realization of the rights of indigenous peoples, pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples and promote the achievement of all internationally agreed development goals.”¹⁵⁷² The World Conference on Indigenous Peoples will take the form of a High Plenary Meeting of the UN General Assembly.

A declaration adopted during a preparatory meeting in Alta, Norway, underlines the role of development models in “destroying the life-giving capacities of Mother Earth and producing a range of detrimental impacts of which climate change could prove to be the most destructive.”¹⁵⁷³ Indigenous traditional knowledge and indigenous understanding of the relationship between humans and nature should be accounted for when designing Sustainable Development Goals.¹⁵⁷⁴ The World Conference on Indigenous Peoples should provide clear guidance on how indigenous peoples’ issues and rights should be included in the post-2015 development agenda and sustainable development goals.

¹⁵⁷⁰ See Oli, Egil, *Accelerated Development of Non-renewable Resources, Rights and Climate Change in Sámi Areas*, in Conference Report 2008: Forum for Development Cooperation with Indigenous Peoples, University of Tromsø (2008), access at: <http://munin.uit.no/bitstream/handle/10037/2994/report.pdf?sequence=1> (last accessed: 31 March 2013).

¹⁵⁷¹ Andersson, Krister, and Elinor Ostrom. (2008) "Analyzing decentralized resource regimes from a polycentric perspective," Policy Sciences, Springer, vol. 41(1), 78.

¹⁵⁷² UN General Assembly (2012. 15 October). Resolution 66/296. Organization of the high-level plenary meeting of the sixty ninth session of the General Assembly, to be known as the World Conference on Indigenous Peoples.

¹⁵⁷³ *Alta Outcome Document*, access at: <http://wcip2014.org/wp-content/uploads/2013/06/Adopted-Alta-outcome-document-with-logo-ENG.pdf>.

¹⁵⁷⁴ Input from stakeholder: International Working Group on Indigenous Affairs.

The Alta Outcome Document¹⁵⁷⁵ also suggested a number of possible institutional changes within the UN and international institutions that could facilitate the observance of indigenous rights, including a new institution dealing with treaties and agreements between states and self-determining indigenous peoples, appoint an Under-Secretary General for Indigenous Peoples or regional bodies reviewing the implementation of the UN Declaration on the Rights of Indigenous Peoples. While these goals appear overly ambitious, an idea to establish officers or teams dealing with indigenous peoples in all relevant UN agencies appears feasible: “all UN agencies, programs and funds engaging in activities impacting on Indigenous Peoples appoint an officer, or establish a team of officers on a permanent and fulltime basis, with particular responsibility to ensure that all such activities are responsive to and adapted for the particular situation of Indigenous Peoples.”¹⁵⁷⁶ Such a proposal is in line with experiences from Arctic governance, which Finland should promote, where indigenous peoples’ organizations and representatives are an important component of regional cooperation (e.g. in the Arctic Council and in the Barents Euro-Arctic Region).

In general, the Alta Outcome Document provided a number of strong recommendations for the World Conference and Nordic states, including Finland, which should take up a number of these recommendations and promote their inclusion in the final document of the World Conference, particularly those establishing parameters for practical and urgent actions (e.g. the participation of indigenous women in international, national and local governance, or provision of financial support and revenue sharing where developments affecting indigenous communities occur).¹⁵⁷⁷

In the context of climate change, Finland should concentrate its input on supporting the development of a long-term strategy for the sustainable and equitable extraction of natural resources from indigenous lands, accounting for the need for a global transition from fossil fuel dependence. In addition, protection and the preservation of sacred places and natural landscapes as interconnected with right to lands and resources need to be highlighted in the light of a changing environment and landscape under pressure from developments and climate change. Indigenous land rights should also be included in the UNESCO framework.¹⁵⁷⁸

The rights and position of indigenous women would be one of the most important discussion topics during the Conference. Finland, building on its reputation in the sphere of gender equality, should become an active participant in the debate surrounding the rights of indigenous women by facilitating women’s participation and addressing issues of multiple discrimination (intersectionality) and violence. In this regard, there is an extreme sense of urgency for Finland to help ensure the alignment of women’s indigenous women’s position (e.g. crafting a message), as well as their mobilization, also in the context of the SDGs. The support of indigenous activists and organizations, especially from regions and communities particularly affected by poverty and lack of resources, is key to their attendance of the World Conference. A greater

¹⁵⁷⁵ Alta Outcome Document, access at: <http://wcip2014.org/wp-content/uploads/2013/06/Adopted-Alta-outcome-document-with-logo-ENG.pdf>.

¹⁵⁷⁶ Ibid.

¹⁵⁷⁷ Ibid.

¹⁵⁷⁸ Ibid.

support in 2014 for the UN Voluntary Fund for Indigenous Populations should be therefore seen as a clear priority.

7.4.4. Institutionalizing Indigenous Ecological Knowledge

Finland should help ensure that IEK is institutionalized.¹⁵⁷⁹ The inclusion of IEK in legal discourse on adaptive management must also recognize integrated indigenous worldviews into overarching practices.¹⁵⁸⁰ The Arctic Climate Impact Assessment (ACIA), for example, was the first comprehensive regional assessment of climate change and its consequences.¹⁵⁸¹ The report recommended that member states implement “management strategies for Arctic ecosystems, making use of local and indigenous knowledge and participation,” and “stressed the importance of intensifying natural and social science research on impacts and adaptation, including studies to enhance understanding of fundamental processes and sustainability, procedures for integrating indigenous and local knowledge into scientific studies, and partnerships between indigenous peoples, local communities and scientists in defending and conducting research and monitoring associated with Arctic climate change.”¹⁵⁸²

7.4.5. Indigenous Women

Finland should take on intersectional analysis as a lens through which climate change policies may and should be viewed in the future.¹⁵⁸³ Intersectional analysis is particularly

¹⁵⁷⁹ Swinomish Indian Tribal Community, “Swinomish Climate Change Initiative Climate Adaptation Action Plan”, accessible at: http://www.swinomish-nsn.gov/climate_change/Docs/SITC_CC_AdaptationActionPlan_complete.pdf (last visited 30 March 2013). At the country level, integration of IEK and climate adaptation planning can be found in National Adaptation Programmes of Action (NAPA). See, for example, Republic of Kiribati NAPA 2007.

¹⁵⁸⁰ For example the Swinomish Indian Tribal Community has “developed a climate change plan that includes initiatives exploring ways in which adaptation planning can incorporate IEK.” Swinomish Indian Tribal Community, “Swinomish Climate Change Initiative Climate Adaptation Action Plan”, available at http://www.swinomish-nsn.gov/climate_change/Docs/SITC_CC_AdaptationActionPlan_complete.pdf (last visited March 30, 2013). At the country level, integration of IEK and climate adaptation planning can be found in National Adaptation Programmes of Action (NAPA). See, for example, Republic of Kiribati NAPA 2007.

¹⁵⁸¹ The ACIA, for example, included a chapter on addressing in examining Arctic change from an indigenous perspective. Three-hundred Arctic researcher, together with indigenous representatives, drafted the ACIA. See Arctic Climate Impact Assessment (ACIA), *Arctic Climate Impact Assessment: Scientific Report*, 989-1020 (2005), available at <http://www.acia.uaf.edu/pages/scientific.html> (last accessed: March 30, 2013); Arctic Climate Impact Assessment (ACIA), *Impacts of Warming Arctic: Arctic Climate Impact Assessment*, 8-20 (2004).

¹⁵⁸² See ACIA 2004.

¹⁵⁸³ “An intersectional analysis can be informed by developments in gender equality analysis, critical race analysis, disability rights analysis and equality rights jurisprudence. These strategies have developed to address the stereotypes, as well as the unique and intersecting experiences of individuals, because of race or gender or disability and would form a necessary part of the contextual and analytical framework... Several authors have examined the issue of multiple and intersecting identities and their relationship to people’s experience in the social, economic, political and legal environment. Several socio-economic reports and research studies documenting individuals’ experiences in society, the workplace and other social spheres highlight the importance of multiple factors that constitute identities and recognize its importance not only in human rights discourse but in human rights policy development as well. Esmeralda Thornhill,¹⁵⁸³ Nitya Iyer (formerly

useful in addressing people's unique discriminatory experiences, especially those not captured by the existing human rights approach.

Indigenous women are environmental caretakers who depend on ecosystems and their services. As a result, they have acquired knowledge on how to sustain, manage, and adapt to changing ecosystems by utilizing non-contaminating techniques and sustainable means of managing natural resources or, as Aguilar refers to them, "coping strategies".¹⁵⁸⁴ As the holders of such knowledge, they often document traditional practices, which can help guarantee the cultural diversity and integrity of indigenous peoples, as well as the survival of flora and fauna species. Such traditional knowledge systems can help in the development of mitigation and adaptation strategies.

Finland should, thus, encourage indigenous women to strengthen their alliance/coalition position prior to official meetings (e.g. at regional, national, and inter-sessional debates), so that women are not called into order by men who leading the process (e.g. at the COP). This must take place at the international level through the support of indigenous women's representation. This is likely have a trickle-down effect to the regional, national, and local level. This has been seen in the case of Sami women, who are increasingly involved in Sami politics via various channels – from organizations and institutions at the local and national to the international level. However, Kuokkanen emphasises that this is a fairly recent phenomenon and, in some cases, "a result of specific campaigns to recruit more women as candidates and encourage women to vote in the Sami Parliament elections. Currently, the percentage of women in the Sami Parliament in Norway is 46 (2009 elections) and in Finland 42 (2007 elections)."¹⁵⁸⁵ However, despite these developments, practices of trivialization and discrimination against Sami women continue to exist.¹⁵⁸⁶

Participation is also often based on quotas and yet little research has been done on how quotas affect minority women, including indigenous women. According to

Duclos),¹⁵⁸³ Emily Carasco,¹⁵⁸³ and Carol A. Aylward¹⁵⁸³ are several scholars who have studied the issue of the intersection of race and gender and have written about the situation of individuals who confront multiple grounds of disadvantage." In "Applying an Intersectional Approach", Ontario Human Rights Commission, access at: <http://www.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims/applying-intersectional-approach>; E. Thornhill, "Regard sur le racisme: Perspectives juridiques à partir d'un vécu noir" (1993) 6 C.J.W.L. 1 and E. Thornhill, "Focus on Racism: Legal Perspectives from a Black Experience" (1994) Currents 8, discussed in C. A. Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood, 1999) at 45; N. Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity" (1993) 19 Queen's L.J. 179; N. Duclos, "Disappearing Women: Racial Minority Women in Human Rights Cases" (1993) 6 C.J.W.L. 25; E. Carasco, "A Case of Double Jeopardy: Race and Gender" (1993) 6 C.J.W.L. 142.

¹⁵⁸⁴ (xv); This includes, for example, Rwandan women who are reported to produce more than 600 varieties of beans. Meanwhile, in Peru, Aguarana women plant more than 60 varieties of manioc. In Aguilar, Lorena. "Linking Gender and Climate Change", IUCN and GGCA.

¹⁵⁸⁵ Kuokkanen, Rauna. (2011), "Self-determination and Indigenous Women – 'Whose Voice Is It We Hear in the Sami Parliament?'" , International Journal on minority and Group Rights 18, 39-62, 43.

¹⁵⁸⁶ Kuokkanen further notes that, "Sami female politicians' perspectives and attempts to participate in political debate are particularly trivialized when the topic is considered belonging to the 'male sphere' such as traditional livelihoods and land use." In Kuokkanen, Rauna. (2011), "Self-determination and Indigenous Women – 'Whose Voice Is It We Hear in the Sami Parliament?'" , International Journal on minority and Group Rights 18, 39-62, 56.

Hughes¹⁵⁸⁷, minority women are particularly underrepresented in high-level political positions globally. While dual identities (e.g. indigenous women) can benefit from both gender and minority quotas by emphasizing their gender or minority status in different institutional contexts, they often benefit from neither.¹⁵⁸⁸ National gender quotas are particularly effective in advancing minority women's representation because they reach across all political parties in a system.¹⁵⁸⁹ By 2008, over 100 countries had adopted gender quotas in some form or another. However, minority quotas are still uncommon.¹⁵⁹⁰ Consequently, it is important to note that gender quotas alone may not aid indigenous women. Hughes, thus, posits that "national gender quotas will generate higher levels of minority women's political representation than party gender quotas."¹⁵⁹¹ Moreover, tandem quotas (minority and national gender quotas together) increase the political representation of minorities.¹⁵⁹² **Consequently, Finland should encourage the use of tandem quotas as a basis for including indigenous women in decision-making processes.** Burundi serves as an example where tandem quotas have been successful because minority women can fulfill two criteria (gender and ethnicity) by only filling one seat.¹⁵⁹³

¹⁵⁸⁷ Hughes has conducted the first world-wide analysis of the effects of gender and minority quotas on minority women's representation in national legislatures. She has analyzed how quotas influence the election of women from more than 300 racial and religious groups across 81 countries. Hughes, Melanie M. (2011) "Intersectionality, Quotas, and Minority Women's Political Representation Worldwide", *American Political Science Review*, 1.

¹⁵⁸⁸ Non-compliance without penalties is a key factor in measuring the success of quotas.¹⁵⁸⁸

¹⁵⁸⁹ This is in comparison to voluntary gender quotas adopted by one or more political parties. In Hughes, Melanie M. (2011) "Intersectionality, Quotas, and Minority Women's Political Representation Worldwide", *American Political Science Review*, 1.

¹⁵⁹⁰ In Hughes, Melanie M. (2011) "Intersectionality, Quotas, and Minority Women's Political Representation Worldwide", *American Political Science Review*, 2.

¹⁵⁹¹ Ibid 4.

¹⁵⁹² Hughes has found that without tandem quotas, the odds of minority women being elected are 1 in 14 compared to majority men, 1 in 2 compared to minority men, and 1 in 3 compared to majority women. In Hughes, Melanie M. (2011) "Intersectionality, Quotas, and Minority Women's Political Representation Worldwide", *American Political Science Review*, 13.

¹⁵⁹³ "In addition to using a 30% national gender quota, Burundi reserves three seats for the Twa, or pygmies, and mandates an overall 60/40% split between majority and minority ethnic groups. Gender and ethnicity are both regulated at the national level through the same mechanism: coopting seats. All political parties compete for 101 seats, but following the elections, additional members are coopted to ensure that the quotas are met. In 2005, for example, 18 additional seats were coopted after the election. Because a minority woman can meet both the ethnic and gender requirements while filling only a single seat, the election or cooptation of minority women means that more majority men can be included in the legislature while still meeting the quota." In Hughes, Melanie M. (2011) "Intersectionality, Quotas, and Minority Women's Political Representation Worldwide", *American Political Science Review*, 13.

7.4.6. Draft Nordic Saami Convention

Finland, Sweden, and Norway should ratify the Nordic Saami Convention, which will facilitate the streamlining of Saami policies in Nordic countries, serving as an example for other indigenous communities aiming to achieve a stronger recognition of their local governments. The Draft Nordic Saami Convention aims to serve as a codification of the need for the involvement of Saami political institutions in decision-making processes. Article 19 is particularly relevant to international processes relating to climate change in noting that, “the Saami Parliaments shall represent the Saami in intergovernmental matters. The states shall promote Saami representation in international institutions and Saami participation in international meetings.”¹⁵⁹⁴

¹⁵⁹⁴ The unofficial English version of the Draft Convention can be found from the Saami Council website at <http://www.saamicouncil.net/?newsid=2223&debtid=2192&languageid=4&news=1> (last accessed: March 30, 2013). For scholarly reviews of the Draft Convention, see, for example, Åhrén, Mattias, et al., “The Nordic Saami Convention: International Human Rights, Self-Determination and Other Central Provisions”, 3 *Galdu Cala – J. Of Indigenous Peoples Rts.* 82 (2007); see also Koivurova, Timo, “The Draft Nordic Saami Convention: nations Working Together”, 10 *Int’l Comm. L. Rev.* 279 (2007).

STAKEHOLDER QUESTIONNAIRE & MAPPING

General Overview: The unequivocal and accelerating implications of climate change demonstrably manifest themselves in many forms – from storms to droughts. Already marginalized groups are particularly vulnerable to the effects of climate change due to minority status, indigenouness, geography, gender, age, or disability. Finland's international human rights policy prioritizes and emphasizes the equal realization of the rights of marginalized groups. Human rights, thus, offer criteria for decision-making in the field of climate change policy and may be an effective means of ensuring the participation of stakeholders at various levels of governance. Consequently, Finland's human rights values may be promoted internationally by strengthening procedural rights, particularly participatory rights, in multi-level governance.

Project Description: This project will consider how to strengthen the participation of marginalized groups (particularly focusing on women and indigenous peoples) by mapping Finland's promotion of human rights values (including ownership, governance, land, and resource rights, as well as Free Prior and Informed Consent) in two regimes: the Climate Change Regime and Development Cooperation. The study is undertaken in two parts: 1) the preliminary research and the analysis of relevant international regimes with a look toward general possibilities for Finland to mainstream human rights within them; and 2) stakeholder consultations in helping identify specific entry points (eg topical issues and targeted projects to be emphasized from a human rights perspective).

Methodology: A key component of our research methodology is the consultation of civil society organizations, as well as other stakeholders (e.g. academic experts) in mapping entry points within international processes where Finland can promote its human rights stance toward marginalized groups (focusing on women and indigenous peoples) and address the vulnerabilities associated with the effects of climate change. We aim to provide decision-makers at the MFA with an understanding of where to concentrate their efforts in developing existing international standards, guidelines, and international law and with a look toward general possibilities for Finland to mainstream human rights within them.

Outcome: The final report aims to serve as a guide or mapping of concrete entry points and recommendations for Finnish negotiators and policy makers in various fields. Input from various stakeholders will, thus, serve to enhance and pinpoint additional entry points and will be acknowledged, as such, within the text.

Questions

Please respond to all applicable questions.

Climate Change Regime, Development Cooperation, REDD+:

1. How can Finland help promote the participatory rights of indigenous women in UNFCCC processes?
2. Do you see opportunities for new modalities and/or working methods in incorporating participatory rights in a climate change context?
3. Do you see opportunities to strengthen the role of women and indigenous peoples with regard to climate financing?
4. Do you see opportunities to strengthen the role of women and indigenous peoples with regard to Loss & Damage?
5. Where do you see opportunities for Finland to help promote the participatory rights of indigenous peoples, women, particularly indigenous women, in the post-2015 development agenda?
6. In your opinion, are current FPIC standards being met in REDD+ processes?

Women & Indigenous Peoples:

1. Do you see a connection between “climate rights” and land rights (e.g. women and indigenous peoples become more vulnerable to losing their land rights)?
2. Do you see opportunities for Finland to strengthen the link between women and climate change in upcoming processes of the Commission on the Status on Women?
3. How can/does the self-determination of indigenous peoples help make international agreements on climate policy more effective?

General:

1. To what extent do you see the notion of a “right to the environment” being utilized in current climate change policy? Is this legal norm useful in promoting human rights in climate policy? Why/why not?
2. To what extent is a human-rights-based approach already implemented in your field of expertise, especially with regard to the effects of climate change on women and indigenous peoples?
3. Are there opportunities to strengthen it? Are there cases where this has been done successfully?
4. If so, do you see upcoming entry points in international processes?
5. What negotiation cycles/timing could be relevant in the short- or medium-term?
6. What processes, with regard to this issue, will you be following (hosting or participating in)?
7. Are there potential partners that Finland can/should be working with (e.g. BRICS)?
8. Additional Comments

9. Upcoming schedule of post-2015 development agenda events/meetings:¹⁵⁹⁵

ICPD-2014 – UNECE Regional Conference	Geneva, Switzerland	1-2 July 2013
2013 Annual Ministerial Review of ECOSOC	Geneva, Switzerland	1-4 July 2013
2013 Substantive Session of ECOSOC	Geneva, Switzerland	1-25 July 2013
ICPD Review International Conference on Human Rights	The Hague, Netherlands	7-10 July 2013
UNGA Thematic Debate on Inequality	UN Headquarters	8 July 2013
Informal Interactive Hearing: International Migration and Development	New York, United States of America	15 July 2013
ICPD Regional Population Conference – UNECLAC	Montevideo, Uruguay	12-14 August 2013
High-Level International Conference on Water Cooperation	Dushanbe, Tajikistan	20-21 August 2013
20th Session of the Commission on Sustainable Development	UN Headquarters	2 September 2013 [tentative]
ICPD Regional Population Conference – UNECA/AU	Addis Ababa, Ethiopia	2-6 September 2013
ICPD Regional Population Conference – UNESCAP	Bangkok, Thailand	16-20 September 2013
68th Session of the UN General Assembly (UNGA 68)	UN Headquarters	17-30 September 2013
High-Level Meeting on Disability and Development	UN Headquarters	23 September 2013
First Session of the High-Level Political Forum	UN Headquarters	24-26 September 2013
UNGA Special Event to Follow up Efforts Made Towards Achieving the MDGs	UN Headquarters	25 September 2013
4th World Congress of United Cities and Local Governments	Rabat, Morocco	1-4 October 2013
High-Level Dialogue on International Migration and Development	UN Headquarters	3-4 October 2013
69th Session of the UN General Assembly (UNGA 69)	UN Headquarters	16-29 September 2014
Special Session to Follow Up Programme of Action from ICPD	UN Headquarters	22 September 2014
World Conference on Disaster Reduction 2015	Japan	1 January 2015[tentative]

¹⁵⁹⁵ Post-2015 Calendar: Current & Upcoming Events, access at: <http://post2015.org/2013/05/08/post-2015-calendar-current-upcoming-events-3/>.